

Edinburgh Commerce Series

**BILLS OF EXCHANGE, CHEQUES
AND PROMISSORY NOTES**



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FOR

W. GREEN & SON, LTD.

Bills of Exchange, Cheques and Promissory Notes

WITH AN APPENDIX CONTAINING THE

“Bills of Exchange Act, 1882”

“Bills of Exchange (Crossed Cheques) Act, 1906”

“Bills of Exchange (Time of Noting) Act, 1917”

THIRD EDITION

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PREFACE TO FIRST EDITION

THE present work is intended for those who are but on the threshold of a banking career, and owes its origin to a request frequently made to the author to write an outline of the law relating to Bills of Exchange, Cheques, and Promissory Notes, for the use of students preparing for the Associates' examination of the Institute of Bankers in Scotland. It is by no means an easy task to write simply upon such a subject as Bills, but it is hoped that in the present case the difficulties which beset the subject have been surmounted, and that by a frequent reference to the Bills of Exchange Act, 1882, which is printed in the Appendix, the student will be enabled to form a fairly accurate idea of the law relating to the documents under consideration, which are now probably the most familiar and important of all our instruments of commerce.

The author is not without hope that the volume may prove of some assistance to bankers generally, as containing in a handy form the main features of the law on a subject which daily requires their careful consideration.

The author desires to express his obligations to Mr. William Baird, F.S.A.Scot., Secretary to the Institute of Bankers in Scotland, for valuable suggestions made during the preparation of the volume.

A. M'N.

January 1904.

PREFACE TO SECOND EDITION

SINCE the last edition was issued, the subtle distinction there noted between the position of a banker who at once credits a customer with the value of a cheque drawn upon another bank, and allows him to draw against the balance thus increased before the cheque is cleared, and the banker who, without crediting the account of the customer with the value of the cheque before collection, allows him to overdraw his account in view of the anticipated credit, has been removed by the passing of the Bills of Exchange (Crossed Cheques) Act, 1906. The effect of this Act has been embodied in the present text.

Several important decisions on the subjects dealt with have recently been pronounced, and these are considered in their appropriate places. The book has otherwise received careful revision.

The author desires to take this opportunity of returning his thanks for the many expressions of appreciation he received on the publication of the first edition.

A. M'N.

January 1910.

PREFACE TO THIRD EDITION

IN preparing the present edition the author has taken the opportunity of revising the whole book and bringing it thoroughly up to date, both as regards case and statute law. Since the last edition was published, the Bills of Exchange (Time of Noting) Act, 1917, has been passed, and the House of Lords, reversing two judgments of the Courts below, have finally determined the important issue raised in the case of *Macmillan & Arthur v. The London Joint Stock Bank, Limited*. These have been considered in their appropriate places.

As originally issued the book was intended for the use of Scottish students, but in response to several requests the scope has been extended. As now published, it is hoped the work will prove of practical utility to all students of the subject in the United Kingdom. The Bills of Exchange Act, 1882, was intended to codify the then existing law and to assimilate the laws of England,

Scotland, and Ireland; while for the most part it did so, certain material differences were allowed to remain. Such differences are now fully explained in the text.

The author is gratified to learn that his work is the recognised text-book in connection with certain examinations, and he ventures to express the hope that it will prove even more useful in the future than it has done in the past.

A. M'N.

EDINBURGH, *August* 1920.

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BILLS OF EXCHANGE, CHEQUES, AND PROMISSORY NOTES

CHAPTER I

INTRODUCTION

THE law relating to Bills of Exchange, Cheques, including dividend warrants, but not drafts by one branch of a bank upon another,¹ and Promissory Notes is now chiefly governed by the Bills of Exchange Act, 1882. While the title of that Act is "An Act to codify the Law relating to Bills of Exchange, Cheques, and Promissory Notes," it must not be assumed that the whole law applicable to these documents can be found within the one hundred sections which go to make up the Act, nor that the Act is a mere codification of the law as it stood at the time of its passing. The Act was intended to alter, and did alter, the law in various respects. In addition to codifying the law to a certain extent, one of the chief objects of the Act was to assimilate the

¹ *Capital and Counties Bank v. Gordon*; *London City and Midland Bank v. Gordon*, [1902] 1 K. B. 242, 273; *affd.* [1903] A. C. 240, 250.

laws of England, Scotland, and Ireland with regard to bills of exchange. In its most important features it did so, but there still remain several material distinctions. One may here be referred to. In section 53, as regards England and Ireland, it is provided that "a bill of itself does not operate as an assignment of funds in the hands of the drawee available for the payment thereof, and the drawee of a bill who does not accept as required by the Act is not liable on the instrument"; whereas in regard to Scotland it is provided that "where the drawee of a bill has in his hands funds available for the payment thereof, the bill operates as an assignment of the sum for which it is drawn in favour of the holder, from the time when the bill is presented to the drawee." In the assimilating process certain rules of Scots law have been retained and made applicable to England and Ireland, and certain principles of the law of these two countries have been retained and made applicable to Scotland. In determining questions affecting bills of exchange, cheques, and promissory notes, the only true guide is the Act itself, unless when its terms declare that the law existing at the time of its passing is to remain unaltered. To a consideration of the Act, attention will now be directed.

CHAPTER II

BILLS OF EXCHANGE

FORM AND INTERPRETATION

NOTE.—Throughout the text the “Bills of Exchange Act, 1882,” is referred to as Act : thus—Act, § 2. A print of the Act is given in the Appendix.

DEFINITION.—The statutory definition of a bill of exchange is : “A bill of exchange is an unconditional order in writing addressed by one person to another, signed by the person giving it, requiring the person to whom it is addressed to pay on demand, or at a fixed or determinable future time, a sum certain in money, to or to the order of a specified person, or to bearer.”¹ An instrument which does not comply with these conditions, or which orders any act to be done in addition to the payment of money, is not a bill of exchange. An order to pay out of a particular fund is not unconditional within the meaning of the Act ; but an unqualified order to pay, coupled with an indication of a particular fund out of which the drawee is to reimburse himself, or a particular account to be debited with the amount, or a statement of the transaction which gives rise to the bill, is unconditional.

¹ Act, § 3.

A bill is usually framed in the following or similar form :—

£50.

3 ISLAY STREET,
GLASGOW, 1st July 1920.

Three months after date pay to me or my order, within
the office of the Paisley Bank, St. Enoch Square, Glasgow,
the sum of fifty pounds, value received.

To

JOHN SMITH.
PETER JONES.

PETER JONES,
3 Market Street,
Leith.

In the above form John Smith is the drawer. Peter Jones, before he signed the bill, was called the drawee or addressee; after he signed the bill, the acceptor. Mr. Smith is also the payee of the bill, being the person to whom the bill is to be paid. An indorser of the bill would sign his name on the back, and the person to whom the bill was indorsed is called the indorsee. It is competent, although unusual, for an indorser to sign on the face of the bill.

While the statutory definition of a bill of exchange is as above stated, and the form above given that usually adopted, there is no statutory form which in all cases must be used. So long as a document contains the essentials of a bill of exchange, it is entitled to the legal privileges of such documents, irrespective of the manner in which it is framed.

Essentials of a Bill.—The essentials are—(1) It must be in writing. The writing may be in ink or pencil, and the bill wholly or partly printed, lithographed, or engraved, and may be expressed in any language, English or foreign. (2) It must contain an order to pay, that is, a demand or request made as a right, and not as a favour. (3) The order must be unconditional, that is to say, not dependent on the

act of the payee, or the occurrence of an event which is not certain to happen. Thus, "on my attaining the age of fifty" is invalid, but "on my death" is valid. (4) It must be addressed by one person to another. The drawee must be named or otherwise indicated with reasonable certainty. (5) It must be signed by or on behalf of the drawer. The drawer's own handwriting is not absolutely necessary, but if he does not sign himself, then the bill must be signed by some other person acting with his authority. The initials of the drawer are sufficient, provided initialling be his usual mode of subscription. A bill may also be signed by a notary-public or justice of the peace, before two witnesses, on behalf of any person liable on a bill, whether drawer, acceptor, or indorser. (6) The bill must be made payable either on demand or at a fixed or determinable future time. (7) The order must be to pay a sum certain in money. An order to pay in bank-notes is not a bill of exchange. Where a bill is drawn out of, but payable in, the United Kingdom, and the sum payable is not expressed in the currency of the United Kingdom, the amount payable is, in the absence of some express stipulation to the contrary, calculated according to the current rate of exchange for sight drafts at the place of payment on the day the bill is payable. It is competent to order a sum to be paid only in a foreign currency or in that of some British possession. (8) The bill must be made payable to, or to the order of, a specified person, or to bearer. (9) The bill must be properly stamped. (For stamp duties, see p. 98.)

A writing which, when issued, does not contain the essential elements of a bill, may yet be capable of being made a bill (see p. 21), and, in any case, of being

enforced as a document of debt, though not entitled to the privileges of a bill.

What Bills are not invalid.—A bill is not invalid by reason (a) that it is not dated; the holder may insert the true date; (b) that it does not specify the value given, or that any value has been given therefor; (c) that it does not specify the place where it is drawn or the place where it is payable.¹ It is competent to insert an alternative place of payment.

Inland and Foreign Bills.—Bills are divided into two classes—Inland and Foreign. An inland bill is one which is, or on the face of it purports to be, both drawn and payable within the British Isles, even though it be actually accepted abroad, or accepted payable abroad,² or drawn within the British Isles upon some person resident therein. Any other bill is a foreign bill. For the purposes of the statute the “British Isles” mean any part of the United Kingdom of Great Britain and Ireland, the Islands of Man, Guernsey, Jersey, Alderney, and Sark, and the Islands adjacent to them, being part of the dominions of His Majesty. A bill (though *de facto* a foreign bill) which does not expressly appear to be a foreign bill, may be treated either as an inland or foreign bill in the option of the holder.³ A foreign bill is usually framed in the following or similar terms:—

£50.

BOMBAY, 1st July 1920.

One month after sight of this first of exchange (second and third unpaid) pay to the order of Messrs. Jones & Coy. fifty pounds for value received, and charge the same to account of Messrs. Brown & Coy. against your letter of credit No. 2.

To

PETER SMYTH.

Mr. WILLIAM WALKER,
(Address).

¹ Act, § 3, sub-sec. (4).

² § 72 (2).

³ Act, § 4.

Effect where different parties to Bill are the same person.—A bill may be drawn payable to, or to the order of, the drawer ; or it may be drawn payable to, or to the order of, the drawee. A bill payable to the drawee may be negotiated by him either before or after acceptance, but when the acceptor of the bill is or becomes the holder of it at or after its maturity in his own right, the bill is discharged, and therefore cannot be negotiated. Where the drawer and drawee are the same person, as in the case of a person drawing a bill in his own name on a firm of which he is the sole partner, or where the drawee is a fictitious person, or a person not having capacity to contract, the holder may treat the instrument at his option either as a bill or promissory note.¹

The drawee.—The drawee must be named or otherwise indicated in a bill with reasonable certainty. The mere acceptance of a bill does not supply the want of a named drawee, but it is competent for any person in possession of the bill to fill in the name of the drawee. A bill may be addressed to two or more drawees whether they are partners or not, but an order addressed to two drawees in the alternative, or to two or more drawees in succession, is not a bill. A referee in case of need may be inserted without invalidating the bill.²

(As to position of referee in case of need, see p. 16.)

The payee.—Where a bill is not payable to bearer, the payee must be named or otherwise indicated with reasonable certainty.³ The indication must be in the bill itself, and not in a separate writing.

In the form given on p. 4 it would have been competent for Mr. Smith to have inserted another

¹ Act, § 5.

² Act, § 6.

³ Act, § 7.

person's name as payee—thus, "Pay to Peter Robinson, 13 Jamaica Street, Glasgow, or order." The necessity for such procedure might arise in circumstances similar to the following. Mr. Smith is indebted to Mr. Robinson, while Mr. Jones is indebted to Mr. Smith. Mr. Robinson calls for his money, which Mr. Smith is unable to pay. Mr. Smith then draws upon Mr. Jones for the amount due to him, and hands the bill to Mr. Robinson. If the bill is signed by Mr. Jones and Mr. Smith, the practical effect is that the debt due to Mr. Smith is in Scotland, although not in England, assigned to Mr. Robinson up to the face value of the bill. A bill which, when issued, does not contain the payee's name, may, if a space have been left for the purpose, be converted into a bill by the person in possession filling in a name. A bill payable to "order" must be construed as payable to "my order," that is, to the order of the drawer, and is, when indorsed by him, a valid bill. A bill may be made payable to two or more payees jointly, or it may be made payable in the alternative to one of two, or one or some of several payees, or to the holder of an office for the time being. Where the payee is a fictitious or non-existing person, the bill may be treated as payable to bearer.

What Bills are negotiable.—When a bill contains words prohibiting transfer, or indicating an intention that it should not be transferable, it is valid as between the parties thereto, but is not negotiable.¹ A bill payable to "*A. B.* only," or to "*A. B.* for my use," is not negotiable. A negotiable bill may be payable either to order or to bearer. It is payable to bearer if it is expressed to be so payable (and even if

¹ Act, § 8.

it contain in addition the name of a payee, which may therefore be disregarded), or if the only or last indorsement be an indorsement in blank (even if such indorsement be preceded by a special indorsement, which may therefore be cancelled). A bill is payable to order which is expressed to be so payable, or which is expressed to be payable to a particular person, and does not contain words prohibiting transfer, or indicating an intention that it should not be transferable. Where a bill, either originally or by indorsement, is expressed to be payable to the order of a specified person, and not to him or his order, it is nevertheless payable to him or his order at his option.

Sum payable—Interest.—The sum payable by a bill is a sum certain within the meaning of the Act although it is required to be paid (*a*) with interest. In the case of inland bills where no rate is specified, but the word “interest” only appears, or where legal interest is stipulated for, interest at five per cent. is implied.¹ For bills payable in a foreign country, a higher rate will be allowed where by the law of such country such higher rate is held to be meant by legal interest. (*b*) By stated instalments. (*c*) By stated instalments, with a provision that upon default in payment of any instalment the whole shall become due. Days of grace must be added to the dates on which the instalments are payable. (*d*) According to an indicated rate of exchange, or according to a rate of exchange to be ascertained as directed by the bill. Where no rate is indicated, the amount payable is calculated according to the rate of exchange for sight drafts at the place of payment on the day the bill is payable. Where the sum payable is expressed in

¹ Act, § 9.

words and also in figures, and there is a discrepancy between the two, the sum denoted by the words is the amount payable. The figures may be looked at to explain an ambiguity in the amount as written. Where a bill is expressed to be payable with interest, unless the instrument otherwise provides, interest runs from the date of the bill, and if the bill is undated, from the issue thereof. If the bill has been issued either ante-dated or post-dated, interest runs from the date it bears. Where there is no stipulation as to interest, interest is payable at five per cent. from the due date of the bill. Where an acceptor of a bill dies during its currency, his executor must pay the bill with interest from the date when it fell due, notwithstanding the fact that he has, in Scotland, at common law six months within which to make payment of the deceased's debts. In England a different rule prevails. There an executor can be sued for payment of the due debts of the deceased immediately after death.

Time of payment—Bills payable on demand.¹—

(1) A bill is payable on demand (*a*) which is expressed to be payable on demand, or at sight, or on presentation; or (*b*) in which no time for payment is expressed. If a demand bill is post-dated, payment cannot be demanded until on and after the date it bears. There are no days of grace on bills payable on demand. Presentment for payment must be made on a business day. (2) Where a bill is accepted or indorsed when it is overdue (that is, in the case of all bills not payable on demand, on the expiry of the last day of grace), it is, as regards the acceptor who so accepts, or any indorser who indorses it, deemed

¹ Act, § 10.

to be payable on demand. This does not, however, make the bill a bill payable on demand within the meaning of the Stamp Act, requiring an additional stamp.

Bills payable at a future time.¹—A bill is payable at a determinable future time which is expressed to be payable (1) at a fixed period after date or sight; (2) on or at a fixed period after the occurrence of a specified event which is certain to happen, though the time of happening may be uncertain. In one case it was held that a bill in which the month and day of the month but not the year were given was sufficiently dated; and it was observed, “But that, in any event, the date on the stamp fixes the year, and may be held to be a part of the date of the bill, and to supply the statement of the year otherwise omitted.”² An instrument expressed to be payable on a contingency is not a bill, and the happening of the event does not cure the defect. Thus a bill payable “when I am in good circumstances” is not a bill, though it is not necessarily invalid as an obligation to pay a sum of money.

Omission of date in Bill payable after date.³—Where a bill expressed to be payable at a fixed period after date is issued undated, or where the acceptance of a bill payable at a fixed period after sight is undated, any holder may insert therein the true date of issue or acceptance, and the bill is payable accordingly; provided that where the holder in good faith and by mistake inserts a wrong date, and in every case where a wrong date is inserted, if the bill sub-

¹ Act, § 11.

² *Speirs & Knox v. Semple*, 1901 (O. H.), 9 S. L. T. p. 153.

³ Act, § 12.

sequently comes into the hands of a holder in due course, the bill is not avoided thereby, but operates and is payable as if the date so inserted had been the true date.

Ante-dating and post-dating.¹—Where a bill or an acceptance or any indorsement on a bill is dated, the date shall, unless the contrary be proved, be deemed to be the true date of the drawing, acceptance, or indorsement, as the case may be. An undated indorsement is presumed to have been made as of the date of the bill, or at least during the currency thereof. A bill is not invalid by reason only that it is ante-dated or post-dated, or that it bears date on a Sunday.

Computation of time of payment—Days of grace.²—When a bill is not payable on demand, or at sight, or on presentation, or if no specified time of payment is expressed, the day on which it falls due is determined as follows:—three days, called days of grace, are in every case, where the bill itself does not otherwise provide, added to the time of payment as fixed by the bill, and the bill is due and payable on the last day of grace. It is always competent for an acceptor to add to his acceptance of the bill, “payable without days of grace.” When payment of a bill is refused by the acceptor at any time on the last day of grace, the holder, though he is entitled at once to give notice of dishonour to the drawer and the indorsers, has no right of action against either the acceptor or the other parties to the bill until the expiration of that day. Accordingly, an action brought by the holder of a bill against the acceptor on the last day of grace was dismissed as premature.³

¹ Act, § 13.

² Act, § 14.

³ *Kennedy v. Thomas* [1894], L. R. 2 Q. B. 759.

Bills falling due on Sunday, Christmas Day, Holidays, etc.—When the last day of grace falls on a Sunday, Christmas Day, Good Friday, or a day appointed by Royal proclamation as a public fast or thanksgiving day, the bill is, except in the case after mentioned, due and payable on the preceding business day. When the last day of grace is a bank holiday¹ (other than Christmas Day or Good Friday), or when the last day of grace is a Sunday and the second day of grace is a bank holiday, the bill is due and payable on the succeeding business day. In cases where the last day of grace falls on Christmas Day and that day is a Sunday, Monday being a holiday, bills are due and payable on Saturday. When, in ordinary course, bills fall due on Christmas Day, and that day is a Saturday, the bills are payable on the preceding business day. When the last day of grace is upon Sunday and the preceding day is Christmas, there is a difference between the laws of England and Scotland as to the date the bill falls due. In England the bill is payable on the 24th December, whereas in Scotland the due date of payment is the 27th December. With reference to New Year's day, which is a holiday in Scotland, when that day is a Saturday, bills which in ordinary course fall due upon either the 1st or 2nd January are payable on Monday, the 3rd January. As bank holidays differ in different countries, the due date of a bill is determined according to the law of the place

¹ The bank holidays in *England* are Easter Monday, the Monday in Whitsun week, the first Monday in August, the 26th day of December, and when the last date falls on a Sunday, then the Monday following. In *Scotland* the bank holidays are New Year's day, Christmas Day—if either of these days fall on a Sunday, then the next following Monday—Good Friday, the first Monday of May, and the first Monday of August.

where it is payable. Thus a bill drawn in a country where no days of grace are allowed, but payable in the United Kingdom or in a country where days of grace are allowed, is payable on the last day of grace.

Reckoning of time.—Where a bill is payable at a fixed period after date, after sight, or after the happening of a specified event, the time of payment is determined by excluding the day from which the time of payment is to begin to run, and by including the day of payment. When a bill is payable at a fixed period after sight, the time begins to run from the date of the acceptance if the bill be accepted, and from the date of noting or protest if the bill be noted or protested for non-acceptance, or from the date of non-delivery if the acceptor, who may retain the bill for the customary period before accepting or refusing to accept, refuses delivery. The usual time for which a bill is left for acceptance is twenty-four hours, but the custom is not universal. The time within which a bill left for acceptance should be accepted depends on the custom of the place of presentment.

Interpretation of word "month" in a Bill.—The term "month" in a bill means calender month. Thus a bill drawn payable one month after the 28th, 29th, 30th, or 31st January is due on the 3rd of March, except in leap years, when a bill dated 28th January, and drawn payable one month after date, is due on the 2nd of March.

Bills drawn payable at one or more usances.—Foreign bills are occasionally drawn payable at one or more usances. By "usance" is meant the customary time at which bills are made payable in a particular country. The length of the usance varies in different places from fourteen days to one, two, or even three months.

Double, treble, and half usance are terms implying corresponding alterations on the usual period.

Referee in case of need.¹—The name of a referee in case of need is, although competent, rarely found on inland bills. Such a reference is in practice confined to foreign bills, and is inserted to prevent the expense and inconvenience resulting from a return of the bill. Where such a reference appears, it rather implies an apprehension on the part of the drawer that the bill will not be regularly accepted or paid. Hence, if a foreign drawer indorses a bill to his banker with the name of a referee thereon, and the bill comes in usual course through probably a series of bankers to the acceptor, who declines either to accept or pay, should the referee accept the bill or pay it at maturity, the expense of the return of the bill, and the consequent interest and charges if credit have been given for the bill, are thereby avoided.

The drawer of a bill and any indorser may insert therein the name of a person to whom the holder may resort in case of need, that is to say, in case the bill is dishonoured by non-acceptance or non-payment. Such person is called the referee in case of need. It is in the option of the holder to resort to the referee in the case of need, or not, as he may think fit. The usual form of a reference in case of need, which is written under the drawee's address, is "in case of need apply to *A. B. for C. D.*," or "in case of need apply to
at" There is, however, no statutory form of words, and provided it is clear that the referee is to be resorted to only in case of need, and that he is not drawn upon alternatively or in succession to the drawees, any form of words is sufficient.

¹ Act, § 15.

Position of referee.—A reference in case of need constitutes the referee agent for the drawer or indorser for payment only, and not agent for notice of dishonour generally. Hence notice to him of dishonour by the acceptor is not notice to the drawer or indorsers. (For the rights and liabilities of a referee who accepts or pays, see pp. 83 and 85.)

Optional stipulations by drawer or indorser—Limitation of liability.¹—The drawer of a bill and any indorser may insert therein an express stipulation (1) negating or limiting his own liability to the holder; (2) waiving as regards himself some or all of the holder's duties. The addition of the words "Pay *D.* or order without recourse to me" to the signature of a drawer or indorser, while limiting such drawer's or indorser's liability, leaves the holder free to have recourse to any other party to the bill whose liability is not so limited. A person who indorses a bill "without recourse" is in the position of a transferor by delivery. (See p. 75.) In one case a person who was not a party to a cheque, at the request of the payee, wrote his name at the back thereof, adding the words *sans recours*, and it was held that he thereby negated his liability as indorser.² The fact of the drawer or indorser waiving any of the holder's duties, such as presentment for payment, giving notice of dishonour, and protesting, while relieving any subsequent holder of the necessity of performing the duty waived, in order to preserve recourse against that particular drawer or indorser, still leaves the performance of that duty necessary in order to preserve recourse against the other parties liable on the bill,

¹ Act, § 16.

² *Wakefield v. Alexander & Co.*, 1901, 17 T. L. R. 217.

whether prior or subsequent to the party waiving. The person who has waived any such duty remains liable on the bill, and he is entitled to give notice of dishonour to the parties liable on the bill prior to him, though he has not received such notice himself.

Definition of acceptance of Bills.¹—The Act defines the acceptance of a bill as “the signification by the drawee of his assent to the order of the drawer.” Except in the case of acceptances for honour (see p. 83) or per procuration (see p. 33), or in the cases provided for in the Companies (Consolidation) Act, 1908, § 77 (by which any person acting under the authority of a company may accept or indorse bills on behalf of the company without incurring personal responsibility, and even then only where such companies have power conferred on them in their deed of incorporation to issue bills or notes, or where the issuing of bills and notes is necessarily incident to the purposes for which the company is established), no one can become a party to a bill as acceptor who is not a proper drawee, or, in other words, an addressee. Thus when a bill is addressed to *B.* and *C.* accepts it, *C.* is not liable as an acceptor; and where a bill is addressed to *B.*, and *B.* accepts and *C.* also writes an acceptance on it, *C.* is not liable as an acceptor. Where a bill addressed to *B. and Coy.* is accepted in the firm’s name by *C.*, a partner, who adds his own name, the acceptance is that of the firm, and not of *C.*²

Requisites of valid acceptance.—An acceptance is invalid unless it complies with the following conditions, viz., (a) It must be written on the bill, or on one bill of a set. (b) It must be signed by the drawee, or by

¹ Act, § 17.

² *Re Barnard*, 1886, L. R. 32 Ch. D. 447, C. A.

some one duly authorised by him. The mere signature (as to signature, see p. 5) without additional words is sufficient; the word "accepted" need not appear on the bill, though this is usual. The signature may either be on the face of the bill or on the back, though the latter is unusual. The word "accepted" without the signature of the addressee is not sufficient. If a corporation is the acceptor, the corporate seal may be adhibited. With regard to a bill accepted abroad, the validity of such acceptance in point of form is determined by the law of the place where the acceptance is made. (c) It must not express that the drawee will perform his promise by any other means than the payment of money. Thus payable "in bills" or "in goods" is invalid. Where the bill is payable after sight, it is proper that the date of acceptance be added; but if this is not done, the date may be inserted by the holder. Where two or more persons accept a bill, their rights *inter se* may competently be determined on a proof.¹

To complete the acceptance, the bill must be delivered to the drawer or to some one on his behalf, or the drawer must be notified that the bill has been accepted. Until either of these conditions is complied with there is no contract on the bill, and a drawee may cancel his signature and return the bill unaccepted.

*Time for acceptance.*²—A bill may be accepted (1) before it has been signed by the drawer or while otherwise incomplete; the acceptor may even write his name on a blank paper. If he do so on stamped bill paper and deliver it for the purpose of being made a bill, he gives a *prima facie* authority to fill it up for

¹ *Crosbie v. Brown*, 1900, 3 F. 83.

² Act, § 18.

any amount the stamp will cover. Unlike an inland bill, a foreign bill may be accepted before it is stamped. Again, the drawer may sign his name even after the acceptor's death. There is no presumption as to the exact time of acceptance. But unless the contrary appear, a bill is *prima facie* deemed to have been accepted before maturity. (2) When it is overdue, or after it has been dishonoured by a previous refusal to accept or by non-payment. (3) When a bill payable after sight is dishonoured by non-acceptance, and the drawee subsequently accepts it, the holder, in the absence of any different agreement, is entitled to have the bill accepted as of the date of the first presentment to the drawee for acceptance. Where the addressee does not accept a bill payable after sight, and the holder does not give notice of dishonour to the drawer and indorsers, in the event of the bill being accepted on a second presentation as of that date, and not of the first date of presentation, the drawer and indorsers are discharged, unless they consent to the bill being accepted as of the date of its second presentment.

General and qualified acceptances.¹—An acceptance is either general or qualified. A general acceptance assents without qualification to the order of the drawer. This binds the acceptor to pay the sum for which the bill is drawn to the person named in the bill and his indorsers at the date and place stated in the bill, or if no place be stated, then at the place of business or residence of the drawee. A qualified acceptance in express terms varies the effect of the bill as drawn. If the acceptor desires to qualify his acceptance, he must do so on the face of the bill in clear and unequivocal

¹ Act, § 19.

terms, and so that any person taking the bill could not, if he acted reasonably, fail to understand that it was accepted subject to an expressed qualification.¹ The acceptance cannot vary the effect of the bill by promising the performance of anything but the payment of money, nor must it engage to pay a larger sum than that for which the bill was drawn. The holder of a bill may refuse to take a qualified acceptance, and may treat the bill as dishonoured by non-acceptance. The mere addition of the words "as cautioner" is not a qualification of the acceptor's engagement to pay. In particular, an acceptance is qualified which is (*a*) conditional, that is to say, which makes payment by the acceptor dependent on the fulfilment of a condition therein stated. Such an acceptance does not warrant the use of summary diligence,² since the fulfilment of the condition must be a matter of proof; (*b*) partial; that is to say, an acceptance to pay part only of the amount for which the bill is drawn. Such an acceptance, unlike one that is otherwise qualified, may be taken by the holder without the assent of the drawer and prior indorsers, though, to preserve recourse against them, the holder must give them notice of the fact; (*c*) local, that is to say, an acceptance to pay only at a particular specified place. An acceptance to pay at a particular place is a general acceptance, unless it expressly states that the bill is to be paid there only, and not elsewhere; (*d*) qualified as to time, as where a bill is drawn one month after date, but is accepted payable six months after date; (*e*) the acceptance of some one or more of the drawees, but not of all. But the acceptance of one drawee for himself and any others will bind

¹ *Meyer v. Decroix, Verley & Co.*, [1891] L. R. A. C. 520.

² Summary diligence is incompetent in England (see p. 96).

those for whom he signs if he have their implied or express authority to do so.

Inchoate Bills.¹—Where a simple signature on a blank stamped paper—that is, on paper bearing an impressed stamp specially appropriated to bills and notes (but not a signature on paper stamped with a different stamp, or a signature on paper bearing an adhesive stamp)—is delivered by the signer in order that it may be converted into a bill, it operates as *primâ facie* authority to fill it up as a complete bill for any amount the stamp will cover, using the signature for that of the drawer or the acceptor or an indorser. In like manner, when a bill is wanting in any material particular, the person in possession of it has a *primâ facie* authority to fill up the omission in any way he thinks fit. It is essential that the stamped paper have been actually delivered for the purpose of being converted into a bill. If it can be proved that it was delivered for any other purpose, or if, instead of being delivered, it has been found or stolen and filled up, and indorsed by a finder or a thief, even for value to a *bonâ fide* holder, the person who originally signed the blank paper afterwards filled up without his consent, express or implied, will not be liable. A person who has merely signed a stamped bill paper may be barred by negligence from setting up the defence that he did not deliver the stamped paper with the signature thereon for the purpose of being made a bill, but such negligence must amount to the actual neglect of a duty on his part. While the holder has in general a right to use the signature on an inchoate bill as that of a drawer, acceptor, or indorser, his right is not so absolute as to entitle him to use a signature on the back of a

¹ Act, § 20.

printed form, and therefore impliedly intended as the signature of an indorser, as that of a drawer or acceptor. In one case a person who had received a blank acceptance for his accommodation on the understanding, though not agreement, that he should sign as drawer, was held entitled to procure another to whom he was indebted to sign as drawer and discount the bill.¹ The authority of a person in possession of an incomplete bill to supply the omissions may be limited to a certain extent by notes on the bill, although not forming part of it, and may be revoked, and impliedly is revoked, by the bankruptcy of the signer. Such revocation, whether actual or implied, does not affect the rights of a holder in due course.²

Bill must be completed within reasonable time.—In order that any such instrument when completed may be enforceable against any person who became a party thereto prior to its completion, it must be filled up within a reasonable time, and strictly in accordance with the authority given.³ Reasonable time for this purpose is a question of fact.⁴ Thus a bill payable on demand must probably be completed in a shorter period than one drawn at a currency. It was and is perhaps not an unusual practice in some parts of the country to bring or send to bank agents bills bearing the signatures and nothing else, which are afterwards filled up by one of the officers of the bank and received in the ordinary course of business. Since a bank, as holders of a bill filled up by one of their agents after the signatures have been adhibited, cannot enforce

¹ *Russell v. Banknock Coal Co.*, 1897, 24 R. 1009.

² *M'Meekin v. Russell & Tudhope*, 1881, 8 R. 587.

³ *Anderson v. Sommerville, Murray & Co.*, 1898, 1 F. 90;
Herdman v. Wheeler, [1902] 1 K. B. 361.

⁴ *Maclean v. M'Ewen & Son*, 1899, 1 F. 381.

payment of it against any parties who can prove that it has not been filled up strictly in accordance with the authority given by them, this practice should be avoided, and no bill should be received which is not complete.

Completed Bill in hands of holder in due course.—If any such instrument after completion is negotiated to a holder in due course, it is valid and effectual for all purposes in his hands, and he may enforce it as if it had been filled up within a reasonable time and strictly in accordance with the authority given. As any fact relating to a bill which is relevant to any question of liability thereon may be proved by the evidence of witnesses, a defence by the signer to an action on the bill by the holder, to the effect that the holder knew at the time of taking it that it had been delivered in an incomplete state, and that it was not intended that it should be filled up for the amount it bears, would be sustained. If such holder negotiate the bill to one who knows that it was filled up in contravention of the authority given, such holder, if not a party to any fraud or illegality affecting it, has all the rights of the holder from whom he took the bill.

A holder in due course is not deprived of his rights because the blank stamped paper is only filled up by the person in possession after the lapse of the prescriptive period, nor by the fact that between the date of the delivery of the signature and the filling up of the blank paper the signer has been bankrupt and discharged.

Delivery.¹—Every contract on a bill, whether it be the drawer's, the acceptor's, or an indorser's, is incomplete and revocable until delivery of the instrument

¹ Act, § 21.

in order to give effect thereto. Provided that where an acceptance is written on a bill, and the drawee gives notice to or according to the directions of the person entitled to the bill that he has accepted it, the acceptance then becomes complete and irrevocable. In this country, where the sender of a letter cannot get it returned after it has been posted, if the indorsee of a bill authorises the indorser to send the bill through the post-office, the bill as soon as it is posted becomes the property of the indorsee. But though until delivery there is no contract on the bill, and the drawee may cancel his signature and return the bill unaccepted, he may still be liable in damages for his refusal to accept. In England a bill of itself does not operate as an assignment of funds in the hands of the drawee available for the payment thereof, and the drawee of a bill who does not accept as required by the Act is not liable on the instrument. In Scotland the law is otherwise there, if the drawee of a bill have in his hands funds available for the payment thereof the bill operates as an assignment of the sum for which it is drawn in favour of the holder from the time when the bill is presented to the drawee. The reason for this is that the drawee's liability is not founded on the bill, but upon the fact of his indebtedness to the drawer of his right to enforce payment of which the bill is the assignation. As between immediate parties (by which is meant parties who are in direct relation to each other, as the drawer and acceptor, the drawer and payee, an indorsee and his next indorsee, etc.), and as regards a remote party other than a holder in due course, the delivery (*a*) in order to be effectual must be made either by or under the authority of the party drawing, accepting, or indorsing, as the case

may be ; (b) delivery may be shown to have been conditional or for a special purpose only, and not for the purpose of transferring the property in the bill. Thus if a bill bear that it is transferred conditionally, any person taking it is affected by the condition. If the bill be in the hands of a holder in due course, a valid delivery of the bill by all parties prior to him, so as to make them liable to him, is conclusively presumed. Where a bill is no longer in the possession of a party who has signed it as drawer, acceptor, or indorser, a valid and unconditional delivery by him is presumed until the contrary is proved.

CHAPTER III

CAPACITY AND AUTHORITY OF PARTIES

CAPACITY to sign Bills.¹—Capacity to incur liability as a party to a bill—applicable alike to drawer, acceptor, or indorser—is coextensive with capacity to contract. The duty rests upon the person taking a bill to see that those who have subscribed it can legally undertake the obligation therein stated. Every person who is of full age and who is subject to no legal incapacity may enter into contracts and render himself liable for their due performance, provided he was not induced to so contract by essential error, force, fear, or fraud. With regard to the person who cannot legally contract by bill there is a difference between the laws of England and Scotland on the subject which may be thus briefly stated.

In England.—In England the persons who cannot so legally contract are (*first*) Infants—all persons until they reach the age of twenty-one years. Although the estate of an infant is liable for necessities supplied to him, a bill granted for such necessities is invalid, the creditor requiring to proceed not on the bill but on the account for the necessities. (*Second*) Although a bill or cheque may be ante-dated or post-dated still if such a document is issued before the attainment of majority the document is bad even in the hands of

¹ Act, § 22.

a holder in due course. An exception to this rule is allowed in the case where the infant has induced another to contract with him on a representation that he was of full age. If an infant pay a bill he cannot thereafter recover the amount on the ground that at the time the bill was granted he was legally incapacitated from undertaking the obligation. Where there are several parties liable on a bill, and one of them is an infant, the other parties cannot escape liability on this ground, and an action may accordingly be proceeded with against them, the name of the infant being omitted. An infant may be appointed an agent, and bills granted by him in this capacity will be binding on his principal if within the scope of his authority. (*Third*) A married woman can validly contract by bill to the like extent as if she were unmarried, but her personal estate is alone liable for the obligation. (*Fourth*) Bills by Incorporated and Joint Stock Companies and by Agents are dealt with *infra*. (*Fifth*) The law regarding bills executed when a person is intoxicated is the same in England and Scotland. (See *infra*.)

In Scotland the persons who cannot so legally contract are lunatics, idiots, interdicted persons (*i.e.* persons upon whom a legal restraint has been placed, because, either through their profuseness or the extreme facility of their tempers, they are too easily induced to make hurtful conveyances: the effect of the interdiction is to disable such persons from signing any deed to their prejudice without the consent of their curators, who are called interdictors), pupils (*i.e.* males under the age of fourteen years and females under the age of twelve years), and in some cases minors (*i.e.* males between the age of fourteen and twenty-one

years, and females between the age of twelve and twenty-one years), and married women. A married woman may, however, if she carries on business for her own behoof, grant bills in connection with such business which will bind her separate estate. In dealing in the ordinary course of trade with a married woman, she is entitled to pledge the credit of her husband who is responsible for proper debts incurred by her. But as regards bills granted by her, not connected with her own estate, any property she may personally possess cannot be attached. This may be illustrated by a reference to the following case, the facts of which were briefly these:—The pursuer was married to a Mr. Galbraith in 1887. Before her marriage she carried on business as a dressmaker in Glasgow under the style of "A. Jack." After her marriage she continued to do so. In matters connected with her business she was in the habit of signing her maiden name. In other matters she signed her married name. A third person applied to the Provident Bank for a loan to be used by him for the purposes of his own business which had no connection with that of Mrs. Galbraith, and on their asking for additional security he submitted the maiden name of the pursuer, describing her as a dressmaker, at her business address. The Bank, believing her to be single, wrote to her in her maiden name asking if the borrower had her authority in giving her name as security for the advance desired. Before she had replied to this letter the borrower called on her with a promissory note for the amount, and she signed it in her maiden name. When the note fell due the principal debtor did not pay, and then the Bank asked the married lady for payment. She refused to do so,

saying she was a married woman, and this defence was upheld by the Court on the ground that she was not bound by her personal obligation, even assuming it to be the case that she had signed it with the consent of her husband.

Intoxicated persons.—With regard to a bill signed by a person while in a state of intoxication, the law has thus been stated : “ Persons while in a state of absolute drunkenness, and consequently deprived of the exercise of reason, cannot oblige themselves ; but a lesser degree of drunkenness, which only darkens reason, has not the effect of annulling the contract.” A distinction is recognised between degrees of intoxication. To have the effect of invaliding a contract, the intoxication must be so complete as to exclude the power of giving the necessary consent. If it falls short of this it must be combined with fraud, in the sense of being fraudulently induced or taken advantage of for the purpose of obtaining the deed or agreement in question. In point of fact, it is only in very rare instances that an obligation can be invalidated by the intoxication of the granter without the additional element of fraud.

Incorporated Companies.—The power of incorporated companies to issue or accept bills is also restricted. Every company has not the right, as a mere incident of its incorporation, to issue or accept bills. Such a power must be expressly conferred in its deed of incorporation, or flow naturally from the avowed business of the company. The form in which a bill or note is to be drawn, indorsed, or accepted so as to bind a joint stock company is regulated by the 77th section of the Companies (Consolidation) Act, 1908, which provides that a promissory note or bill of

exchange shall be deemed to have been made accepted, or indorsed on behalf of any company under the Act, if made, accepted, or indorsed in name of the company by any person acting under the authority of the company, or if made, accepted, or indorsed by or on behalf or on account of the company by any person acting under the authority of the company. This section does not, however, in any way authorise every company to issue or accept bills; it merely prescribes the form which must be adopted by such companies as have power to issue and accept bills.

Where a bill is drawn or indorsed by an infant, minor, or corporation having no capacity or power to incur liability on a bill, the drawing or indorsement entitles the holder to receive payment of the bill, and to enforce it against any other party thereto.

(As to ordinary partnerships, see *infra*.)

Signature of parties essential to liability.¹—No person is liable as a drawer, indorser, or acceptor of a bill who has not signed it as such. No person can be liable on a bill except in one of these three capacities.

Trade or assumed name.—Where a person signs a bill in a trade or assumed name, he is liable thereon as if he had signed it in his own name. No one can accept a bill except the drawee, but if the acceptor sign a different name from that of the person to whom the bill is addressed, the holder is entitled to prove that the signature is the signature of the trade or assumed name of the drawee. Such a bill would not in Scotland warrant summary diligence. There is no like diligence in England.

¹ Act, § 23.

Partnership.—Failing notice to the contrary, the signature of the name of a firm is equivalent to the signature by the person so signing of the names of all persons liable as partners in that firm. Such signature renders action or diligence competent against all the partners of the firm. A probable exception may be allowed in the case of a non-trading partnership. For instance, one partner of a firm of solicitors cannot bind his co-partners on bills without the express authority of his co-partners for the reason that such transactions are not necessary in the ordinary course of the business of a firm of solicitors. Where a signature is common to an individual, and a firm of which the individual is a member ; that is to say, if a business is carried on under the name of John Smith, and the partners in the business are Mr. Smith, Mr. Jones, and Mr. Robinson, a *bonâ fide* holder for value, without notice whose paper it is, of a bill of exchange with such signature attached, has not an option to sue either the individual or the firm. But there is a presumption that the bill was given for the firm and is binding upon it, at least where the individual carries on no business separate from the business of the firm of which he is a member. This presumption, however, may be rebutted by proof that the bill was signed not in the name of the partnership but of the individual for his private purposes ; and it is immaterial that the *bonâ fide* holder took the bill as the bill of the proprietors of the business carried on by the partnership, whoever they may be, and not merely as the bill of the individual. If a bill is addressed to a firm, and is accepted by a partner thereof in the firm's name, the addition of that partner's own name beneath that of

the firm does not render the partner separately liable. A firm's signature to a bill by one of the partners after the dissolution of the copartnery does not bind the firm or the other partners.¹ (For effect on cheques of dissolution of partnership, death of partner of firm, and countermand of payment of cheque, see *infra* cheques.)

Forged or unauthorised signature.²—Subject to the provisions of the Act,³ where a signature on a bill is forged or placed thereon without the authority of the person whose signature it purports to be, the forged or unauthorised signature is wholly inoperative, and no right to retain the bill or to give a discharge therefor, or to enforce payment thereof against any party thereto, can be acquired through or under that signature, unless the party against whom it is sought to retain or enforce payment of the bill is precluded from setting up the forgery or want of authority. Thus a person may by his conduct be precluded from denying the genuineness of his signature to an innocent holder. But when a person comes to know that his signature has been forged to a bill, mere delay on his part in giving notice of the forgery to the bill-holder will not necessarily imply adoption, nor bar him from repudiating liability. Thus in a recent case it transpired that, in connection with certain bill transactions extending over a period of between twelve and thirteen years, some twenty-seven notices that certain bills were past due were sent to a person whose name appeared on them and that he had taken no notice of the intimations. His name was forged on the bills.

¹ *Goodwin v. Indust. & Gen. Trust Co., Ltd.*, 1890, 18 R. 193.

² Act, § 24.

³ See §§ 54 (2), 55 (2), 60, 80, and 82, in Appendix.

Subsequently the bank who held the bills sought to make the person whose name had been forged liable, on the ground that by his silence he had homologated and adopted the signature on the bills as his genuine signature, but it was decided that when a notice regarding a bill is sent to a person who has not signed it, mere silence on his part will not infer adoption of the signature so as to make him liable for the amount of the bill.¹ No one can be a holder in due course of a bill who derives his title through a forged indorsation.

Ratification of unauthorised signature.— Nothing in the Act affects the ratification of an unauthorised signature not amounting to a forgery; that is, nothing prevents a signature not forged, but adhibited without authority, from being subsequently ratified, so as to preclude the person so ratifying from pleading that it had been adhibited without his authority.

Procurator signatures.²—A signature by procurator operates as notice that the agent has but a limited authority to sign, and the principal is only bound by such signature if the agent in so signing was acting within the actual limits of his authority. An agent has no power to delegate the authority conferred upon him by his principal. Where an agent accepts or indorses *per* procurator, the taker of the bill or note so accepted or indorsed is bound to inquire as to the extent of the agent's authority; and where an agent has such authority, his abuse of it does not affect a *bonâ fide* holder for value. A person who is authorised to sign bills *per* procurator in respect of his principal's private business is not acting within the

¹ *British Linen Co. v. Cowan*, 1906, 8 F. 704.

² Act, § 25.

limits of his authority in accepting *per* procuration bills connected with his principal's partnership business. An authority to draw cheques does not necessarily include an authority to draw bills.

Persons signing as agent or in a representative capacity.¹—Where a person signs a bill as drawer, indorser, or acceptor, and adds words to his signature indicating that he signs for or on behalf of a principal or in a representative capacity, he is not personally liable thereon, but the mere addition to his signature of words describing him as an agent or as filling a representative character does not exempt him from personal liability. Thus if a person who has no authority to do so sign a bill as agent for a disclosed principal, and the principal repudiate liability, the agent is not liable on the bill, though he may be liable personally to indemnify the holder for any loss sustained. But where a contract is signed by one who professes to be signing "as agent" but who has no principal existing at the time, and the contract would be wholly inoperative unless binding upon the person who signed it, he is personally liable on it. Where a company has by its memorandum and articles of association power to draw and accept bills, the directors or other officials signing "for and on behalf of" the company are not personally liable. A different result follows where the company has no such power. Here the persons signing would be personally liable to a holder for value, as by their acceptance they represented that they had authority to accept on behalf of the company, which being a false representation of a matter of fact, and not of law, gave a cause of action to the holder who had

¹ Act, § 26.

acted upon it. In determining whether a signature on a bill is that of the principal or that of the agent by whose hand it is written, the construction most favourable to the validity of the instrument is adopted.

CHAPTER IV

THE CONSIDERATION FOR A BILL

VALUE and holder for value.¹—There is a material and marked distinction between the laws of Scotland and England with regard to the consideration necessary to support a bill of exchange. The law regarding the consideration for a bill may thus be generally stated. To render a bill valid in Scotland it does not require to have been granted for value adequate or inadequate, nor do the words “for value received” require to form part of it, whether value have been received or not. In the cases following, the plea that the bill was granted for no valuable consideration may be a relevant defence, which if proved will preclude the holder, though not an original party, but not a holder in due course, from enforcing it. (*a*) Where the bill has been signed without intention to grant an obligation, or where it has been obtained by fraud, force, or fear. (*b*) Where a bill has been given under an agreement that it was to be used only on a certain consideration, which has failed. (*c*) Where it is an accommodation bill. (*d*) Where it is given for an immoral or illegal consideration, or one which the law does not recognise, or under such circumstances as to

¹ Act, § 27.

make the transaction iniquitous and tantamount to a fraud, as where a moneylender extorted from a poor woman promissory notes for very large sums in consideration of granting her twenty-four hours' delay in repaying a previous loan.¹ (e) Where the bill is reducible by the granter's creditors. In England, on the other hand, a bill is invalid if granted for no valuable consideration. Hence a voluntary gift of money does not constitute value. Valuable consideration has thus been defined "some right, interest, profit, or benefit accruing to the one party or some forbearance, detriment, loss or responsibility given, suffered or undertaken by the other." Once, however, valuable consideration is established, the Court will not look too minutely into the question whether the value has been adequate or inadequate. Questions of some difficulty have arisen where an undue advantage has been taken of a person's position in an attempt to force a bargain, as when a woman was induced to grant an accommodation bill without independent advice. The Bills of Exchange Act thus defines the consideration necessary. Valuable consideration for a bill may be constituted by (a) any consideration sufficient to support a simple contract; (b) an antecedent debt or liability. Such a debt or liability is deemed valuable consideration whether the bill is payable on demand or at a future time. Where value has at any time been given for a bill, the holder is deemed to be a holder for value as regards the acceptor and all parties to the bill who became parties prior to such time. Where the holder of a bill has a lien on it, arising either from contract or implication of law, he is deemed to be a holder for value to the extent of the sum for which

¹ *Young v. Gordon*, 1896, 23 R. 419.

he has a lien. This provision of the statute may best be illustrated by the position of bankers. Bankers have a general lien over all negotiable instruments in their hands belonging to their customer, which come into their hands in the ordinary course of business, and are entitled to hold such documents and the proceeds thereof in security or payment of their customer's whole indebtedness to them. This statement is subject to the qualification that the bills or documents are held by them under no contract expressed or implied inconsistent with a right of lien. Hence bankers have no lien over bills which are sent to them for discount, but which they refuse to discount.

Accommodation Bills.—Accommodation bills, or wind bills, as they are sometimes called, do not differ in form from ordinary trade bills, but are different in their legal effect as regards the parties to them, so far as betwixt such persons they do not represent a real debt. In a question, however, with third parties, an accommodation bill is in the same position as any other bill issued in the ordinary course of business, the legal presumption being that it is a bill drawn and issued for value.

An accommodation party to a bill is a person who has signed a bill as drawer, acceptor, or indorser without receiving value therefor, and for the purpose of lending his name to some other person.¹ An accommodation party is liable on the bill to a holder for value, and it is immaterial whether, when such holder took the bill, he knew such party to be an accommodation party or not.

Where a person accepts a bill without receiving

¹ Act, § 28.

value therefor, he is liable to repay to the drawer or an indorser who has paid the bill at maturity, unless he proves that he accepted the bill for the accommodation of such drawer or acceptor.

Cross-Accommodation Bills are bills which are mutually exchanged between the parties, *A.* accepting a bill for the accommodation of *B.*, and *B.* for the accommodation of *A.*, for like amounts and of the same date and currency. It is a general rule of law that such bills are respectively good considerations for each other, and if up to the due date they have not been discharged they are then held as extinguished by compensation, the one bill being set off against the other, and neither party having a claim against the other.

Holder in due course.¹—A holder in due course is a holder who has taken a bill, complete and regular on the face of it, under the following conditions, viz., (*a*) that he became the holder of it before it was overdue and without notice that it had been previously dishonoured if such was the fact; (*b*) that he took the bill in good faith and for value, and that at the time the bill was negotiated to him he had no notice of any defect in the title of the person who negotiated it. No one can be a holder in due course of a bill the signature to which has been forged or adhibited without authority. In particular, the title of a person who negotiates a bill is defective within the meaning of the Act when he obtained the bill or the acceptance thereof by fraud, duress, or force and fear, or other unlawful means (as, for example, by theft), or for an illegal consideration, or when he negotiates it in breach of faith, or under such circumstances as amount to a fraud. A person whose title is defective is to be

¹ Act, § 29.

distinguished from one who has no title at all. (c) A holder, whether for value or not, who derives his title to a bill through a holder in due course, and who is not himself a party to any fraud or illegality affecting it, has all the rights of that holder in due course as regards the acceptor and all parties to the bill prior to that holder.

Presumption of value and good faith.¹—Every party whose signature appears on a bill is *prima facie* deemed to have become a party thereto for value. Every holder of a bill is *prima facie* deemed to be a holder in due course, but this presumption may be overcome by parole evidence. If in an action on a bill it is admitted or proved that the acceptance, issue, or subsequent negotiation of the bill is affected with fraud, duress, or force and fear, or illegality, the burden of proof is shifted unless and until the holder proves that subsequent to the alleged fraud or illegality value has in good faith been given for the bill. Where fraud is averred and proved, the burden of proof is on the pursuer to show that value has been given, and that it has been given in good faith without notice of any fraud.

¹ Act, § 30.

CHAPTER V

NEGOTIATION OF BILLS

WHAT constitutes negotiation.—A bill is negotiated when it is transferred from one person to another in such a manner as to constitute the transferee the holder of the bill.¹ Thus the delivery of unindorsed bills payable to order to a person is not negotiation of them. A bill payable to bearer is negotiated by delivery. No indorsement is necessary. A bill payable to order is negotiated by the indorsement of the holder, completed by delivery. The following may negotiate bills for a named holder: (*a*) an agent having authority to do so; (*b*) an executor; or (*c*) a trustee in bankruptcy.

Transfer for value without indorsation.—Where the holder of a bill payable to his order transfers it for value without indorsing it, the transfer gives the transferee such title as the transferor had in the bill, and the transferee in addition acquires the right to have the indorsement of the transferor. In the event of the bill being subsequently indorsed, it is a question what date will be held to be the date of delivery. It is thought that the date of delivery must be taken to be the date of indorsement, and not of the first delivery. Where any person is under obligation to indorse a bill in a representative capacity,

¹ Act, § 31.

such as agent for another, trustee, or executor, he may indorse it in such terms as to negative personal responsibility. (As to mode of so doing, see pp. 16 and 34.)

Requisites of a valid indorsement.¹—An indorsement to operate as a negotiation must comply with the following conditions, namely, it must be written on the bill itself and be signed by the indorser. An indorsement in pencil is a sufficient indorsement, but for obvious reasons such indorsements should not readily be accepted. Although usual, the indorsement need not be on the back of the bill. The signature of the indorser on the face of the bill is sufficient. The simple signature of the indorser on the bill without additional words is sufficient. An indorsement on a separate paper is not a valid negotiation of a bill, but may entitle the person to whom the paper is delivered to have the bill duly indorsed to him. The fact that a person writes his name on the back of a bill and hands it to another does not necessarily constitute him an indorser, but he may be liable as a guarantor. Thus where a person indorsed a bill to the effect that in case of non-payment by the acceptor the bill was to be presented to him, it was held that although he could not be sued as an indorser, he was liable as a guarantor.² An indorsement written on an “allonge” or on a “copy” of a bill issued or negotiated in a country where “copies” are recognised is deemed to be written on the bill itself. An “allonge” (Fr. *allonge*, lengthening, drawing out) is the term applied to a slip of paper upon which the supernumerary indorsements may be written. A copy is not to be confounded with one of

¹ Act, § 32.

² *Stagg, Mantle & Co. v. Brodrick*, 1895, 12 T. L. R. 12.

the bills in a set, nor with the duplicate of a lost bill.

Partial indorsement.—It must be an indorsement of the entire bill. A partial indorsement, that is to say, an indorsement which purports to transfer to the indorsee a part only of the amount payable, or which purports to transfer the bill to two or more indorsees severally, does not operate as a negotiation of the bill. There seems nothing incompetent in the holder, after receiving a payment to account, negotiating the bill *quoad* the balance, for then that is the “sum payable.”

Several payees or indorsees.—Where a bill is payable to the order of two or more payees or indorsees who are not partners (and even then, if the business be not one where power to indorse is presumed), all must indorse, unless the one indorsing has authority to indorse for the others.

Misdescription of payee or indorsee.—Where in a bill payable to order the payee or indorsee is wrongly designated or his name misspelt, he may indorse the bill as therein described, adding, if he thinks fit, his proper signature. If the proper signature is not added, summary diligence is incompetent.

Order of indorsements.—Where there are two or more indorsements on a bill, each indorsement is deemed to have been made in the order in which it appears on the bill, until the contrary is proved.

Kinds of indorsements.—An indorsement may be made in blank or special. It may also contain terms making it restrictive or conditional.

Conditional indorsement.¹—Where a bill purports to be indorsed conditionally, the condition may be disregarded by the payer, and payment to the indorsee

¹ Act, § 33.

is valid whether the condition has been fulfilled or not.

Blank indorsement.¹—An indorsement in blank specifies no indorsee, and a bill so indorsed becomes payable to bearer. A blank indorsement may be made either by writing a simple signature on the bill, or by writing above the signature the words “Pay to or order,” or “Pay to or bearer.” A blank indorsement followed by a special indorsement remains payable to bearer, but the holder must cancel the indorsements subsequent to the blank indorsement. A person taking a bill in such circumstances may be affected by notice that his transferor’s title is defective.

Special indorsement.—A special indorsement specifies the person to whom, or to whose order, the bill is to be payable. “Pay to *A. B.*,” “Pay to *A. B.* or order,” or “Pay to *A. B.’s* order,” are special indorsements. The provisions relating to a payee apply, with the necessary modifications, to an indorsee under a special indorsement.

Conversion of blank into special indorsement.—When a bill has been indorsed in blank, any holder may convert the blank indorsement into a special indorsement by writing above the indorser’s signature a direction to pay the bill to, or to the order of, himself or some other person.

Restrictive indorsement.—Where a restrictive indorsement authorises further transfer, all subsequent indorsees take the bill with the same rights and subject to the same liabilities as the first indorsee under the restrictive indorsement.²

What is a restrictive indorsement.—An indorsement is restrictive which prohibits the further negotiation

¹ Act, § 34.

² Act, § 35.

of the bill, or which expresses that it is a mere authority to deal with the bill as thereby directed, and not a transfer of the ownership thereof; as for example, if a bill be indorsed "Pay *D.* only," or "Pay *D.* for the account of *X.*," or "Pay *D.* or order for collection." "Pay to *A. B.* or order, value in account with *C. D.*," is not a restrictive indorsement, but in effect a simple indorsement to "*A. B.* or order."

Rights and powers of restricted indorsee.—A restrictive indorsement gives the indorsee the right to receive payment of the bill and to sue any party thereto that his indorser could have sued, but gives him no power to transfer his rights as indorsee, unless it expressly authorises him to do so. A person to whom a bill is restrictively indorsed for collection, and who pays the amount of the bill to the indorser, cannot, because of such payment, acquire rights on the bill against the acceptor where the amount is paid to the indorser before maturity. The indorsee may delegate his duty of collection to a third party if the words "or order" are added to the indorsation, but under an indorsation such as, "Pay *A. B.* for my account," *A. B.* cannot authorise a third party to collect it for him.

Negotiation of overdue Bills.¹—(1) Where a bill is negotiable in its origin, it continues to be negotiable until it has been (*a*) restrictively indorsed, or (*b*) discharged by payment or otherwise. The fact that an action has been brought on a dishonoured bill does not operate to make the bill non-negotiable. A prescribed bill in Scotland cannot be negotiated, or a bill in England which falls under the statute of Limitations, for then it is extinguished by the running

¹ Act, § 36.

of the years of prescription, or the six years provided for in the statute just mentioned. (2) Where an overdue bill is negotiated, it can only be negotiated subject to any defect of title affecting it at its maturity, and thenceforward no person who takes it can acquire or give a better title than that which the person from whom he took it had. (3) A bill payable on demand is deemed to be overdue, within the meaning and for the purposes of the Act, when it appears on the face of it to have been in circulation for an unreasonable length of time. What is an unreasonable length of time for this purpose is a question of fact. The *onus* is on the person assailing the holder's title to prove that the bill has been in circulation for an unreasonable length of time.

Presumption as to date of negotiation.—Except where an indorsement bears date after the maturity of the bill, every negotiation is *primâ facie* deemed to have been effected before the bill was overdue. An undated indorsement is in Scotland presumed to have been made of the same date as the bill. In England, on the other hand, there is no such presumption, and if the date of indorsement is disputed, it is a question for the jury to determine whether the bill was negotiated before or after maturity. The date of an indorsement is presumed to be the true date, in the absence of proof to the contrary.

Negotiation of dishonoured Bills.—Any person who takes a dishonoured bill which is not overdue, with notice of the dishonour, takes it subject to any defect of title attaching thereto at the time of dishonour, but this does not affect the rights of a holder in due course. A bill known to be dishonoured is thus upon the same footing as one overdue.

*Negotiation to party already liable on Bill.*¹—Where a bill is negotiated back to the drawer, or to a prior indorser, or to the acceptor, such party may, subject to the provisions of the Act,² re-issue and further negotiate the bill, but he is not entitled to enforce payment of the bill against any intervening party to whom he was previously liable. An acceptor who is the holder at or after maturity cannot re-issue the bill, nor can a drawer or indorser who is an accommodated party if he have paid the bill in due course.

¹ Act, § 37.

² Act, §§ 59-64.

CHAPTER VI

RIGHTS AND DUTIES OF HOLDER

RIGHTS and powers of holder.¹—The rights and powers of the holder of a bill are as follows: (1) He may sue on the bill in his own name. He may also in Scotland proceed with summary diligence, or claim in a multiplepinding, or found on the bill as a ground of compensation. In both Scotland and England if a bill be payable to a specified person or persons, any action on the bill must be raised in the name of such person or persons. Further, in England the holder of a bill is entitled to maintain an action thereon in his own name against all or any of the parties liable thereon unless it can be shown that he holds the bill adversely to the true owner. When a bill is payable to bearer an action thereon may be brought in the name of any person who has either the actual or the constructive possession thereof; and constructive possession jointly with others is sufficient to entitle the possessor to sue alone. In both Scotland and England where a person liable on a bill becomes bankrupt the holder is entitled to claim on his estate for the amount due. (2) Where he is a holder in due course, he holds the bill free from any defect of title of prior parties, as well as from mere personal defences available to prior parties among themselves, and may

¹ Act, § 38.

enforce payment against all parties liable on the bill. (3) Where his title is defective (as for example if he be a thief, finder, or one who has obtained the bill by fraud or violence), if he negotiates the bill to a holder in due course, that holder obtains a good and complete title to the bill, and if he obtain payment of the bill, the person who pays him in due course gets a valid discharge for the bill. The *right* to negotiate a bill, which is an incident of ownership, is not to be confounded with the *power* to negotiate it, which is an incident of apparent ownership. On the death of a holder his rights pass to his executors. On his bankruptcy, if he be the beneficial owner of the bill or if the bill be payable to a bankrupt for his own account his rights pass to his trustee. If the holder be not the beneficial owner of the bill (and provided that he was not the reputed owner of it), the title does not pass to the trustee.

General duties of the holder.¹ When presentment for acceptance is necessary.—Where a bill is payable after sight, presentment for acceptance is necessary in order to fix the maturity of the instrument. The acceptance should be dated, but the want of a date does not affect the maturity of the bill. It is competent to the holder to insert the true date, but if he inserts a wrong date in good faith and by mistake, or if the bill with a wrong date subsequently comes into the hands of a holder in due course, the insertion of a wrong date renders the bill payable on that date. Where a bill expressly stipulates that it shall be presented for acceptance, or where a bill is drawn payable elsewhere than at the residence or place of business of the drawee, it must be presented for acceptance

¹ Act, § 39.

before it can be presented for payment. In order to be effectual, the stipulation must appear *ex facie* of the bill. In no other case is presentment for acceptance necessary in order to render liable any party to the bill. Where the holder of a bill drawn payable elsewhere than at the place of business or residence of the drawee has not time, with the exercise of reasonable diligence, to present the bill for acceptance before presenting it for payment on the day that it falls due, the delay caused by presenting the bill for acceptance before presenting it for payment is excused, and does not discharge the drawer and indorsers. "Reasonable diligence" varies according to circumstances.

Time for presenting Bill payable after sight.¹—When a bill payable after sight is negotiated, the holder must either present it for acceptance or negotiate it within a reasonable time. If he does not do so, the drawer and all indorsers prior to that holder are discharged. In determining what is a reasonable time, regard is had to the nature of the bill, the usage of trade with respect to similar bills, and the facts of the particular case. The time will be reckoned from the date when the holder receives the bill, and with reference to the time each successive holder keeps it.

Rules for presentment for acceptance and excuses for non-presentment.²—A bill is duly presented for acceptance which is presented in accordance with the following rules:—

By whom, to whom, and when.—The presentment must be made by or on behalf of the holder to the drawee, or to some person authorised to accept or to refuse acceptance on his behalf, at a reasonable hour on a business day (as to non-business days, see p. 94),

¹ Act, § 40.

² Act, § 41.

and before the bill is overdue. Where a bill is drawn on a firm whose business entitles a partner to accept bills, presentment to one of the partners is sufficient. Where a bill is drawn on a company incorporated under the Companies Acts, presentment must be made to a person who has the authority of the company to accept bills. "Reasonable hours" in the case of a trader means business hours, and in the case of a banker, banking hours. Where the drawee is not in business, it is a jury question whether the bill has been presented in reasonable hours.

Two or more drawees.—Where a bill is addressed to two or more drawees who are not partners, presentment must be made to them all, unless one has authority to accept for all, then presentment may be made to him only. A bill addressed to several drawees, acceptance of which is refused by one, need not be presented to the others, since such an acceptance is qualified, and the taking of it without assent, express or implied, of the drawer and indorsers discharges them.

Drawee dead or bankrupt.—Where the drawee is dead, presentment may be made to his personal representative; where the drawee is bankrupt, presentment may be made to him or to his trustee. In these two cases presentment, in accordance with the foregoing rules, is excused, and the bill may be treated as dishonoured.

Presentment through the post-office.—Where authorised by agreement or usage, a presentment through the post-office is sufficient.

Cases in which presentment is excused.—Presentment, in accordance with these rules, is excused, and a bill, may be treated as dishonoured by non-acceptance (a) where the drawee is dead or bankrupt, or is a fictitious

person, or a person not having capacity to contract by bill. (As to persons not having capacity to contract by bill, see p. 26.) Where the person to whom the bill is addressed is a fictitious person, or a person not having capacity to contract by bill, the holder may treat the instrument as a note to which the provisions as to presentment for acceptance do not apply. (*b*) Where, after the exercise of reasonable diligence, such presentment cannot be effected. (*c*) Where, although the presentment has been irregular, acceptance has been refused on some other ground. The fact that the holder has reason to believe that the bill on presentment will be dishonoured does not excuse presentment. Presentment for acceptance differs from presentment for payment, in that it should be personal, and that it is immaterial where it is made; whereas presentment for payment should be local, and where the money is. This distinction may be material in deciding whether the holder has used reasonable diligence in presenting.

Non-acceptance.¹—When a bill is duly presented for acceptance and is not accepted within the customary time, the person presenting it must treat it as dishonoured by non-acceptance. If he do not, the holder shall lose his right of recourse against the drawer and indorsers. The drawee may require that the bill be left with him for acceptance, and he is entitled to retain it for the customary period, which is usually twenty-four hours, but varies according to the custom of the place of presentment. In reckoning the period non-business days are excluded. On the lapse of this time the drawee must deliver the bill accepted or not accepted. If it is not delivered accepted, the holder must have it noted for non-acceptance, or otherwise

¹ Act, § 42.

treated as dishonoured. (As to protest for non-delivery, see p. 68.)

Dishonour by non-acceptance and its consequences.¹—A bill is dishonoured by non-acceptance (a) when it is duly presented for acceptance, and such an acceptance as is prescribed by the Act is refused or cannot be obtained; or (b) when presentment for acceptance is excused and the bill is not accepted. Subject to the provisions of the Act,² when a bill is dishonoured by non-acceptance, an immediate right of recourse against the drawer and indorsers accrues to the holder, and no presentment for payment is necessary. Notice of dishonour must, however, be given, and the bill protested where necessary.

The following is a form of notice:—

(Place and date.)

To.....

Take notice that a bill for £ under date the
payable in months, drawn by (*if to drawer say*
you, if to indorser say drawn by , and which
bears your indorsement), has been dishonoured by non-
acceptance (*in the case of a foreign bill add "and protested,"*
if it have been noted or protested), and that you are held
responsible therefor.

(Sgd.)

Duties as to qualified acceptances.³—The holder of a bill may refuse to take a qualified acceptance, and if he does not obtain an unqualified acceptance, may treat the bill as dishonoured by non-acceptance. Where a qualified acceptance is taken, and the drawer or an indorser has not expressly or impliedly authorised the holder to take a qualified acceptance, or does not subsequently assent thereto, such drawer or indorser is discharged from his liability on the bill. These

¹ Act, § 43. ² Act, §§ 16, 22, 40, 48, 51, 64, 65. ³ Act, § 44.

provisions do not apply to a partial acceptance whereof due notice has been given. The notice should be of a partial acceptance, not of dishonour. Where a foreign bill has been accepted as to part, it must be protested as to the balance. When the drawer or indorser of a bill receives notice of a qualified acceptance, and does not within a reasonable time express his dissent to the holder, he is deemed to have assented thereto.

Rules as to presentment for payment.¹—Subject to the provisions of the Act,² a bill must be duly presented for payment, except in the cases where presentment is excused. Presentment for payment implies a demand for payment. If it be not presented, the drawer and indorsers are discharged. A bill is duly presented for payment which is presented in accordance with the following rules:—

1. Where a bill is not payable on demand, presentment must be made on the day it falls due, that is, the last day of grace.
2. Where a bill is payable on demand, then, subject to the provisions of the Act, presentment must be made within a reasonable time after its issue, that is, after the first delivery of the bill, to a person who takes it as a holder, in order to render the drawer liable, and within a reasonable time after its indorsement, in order to render the indorser liable. In determining what is a reasonable time, regard is had to the nature of the bill, the usage of trade with regard to similar bills, and the facts of the particular case.
3. Presentment must be made by the holder (that is, the bearer in a bill payable to bearer, and

¹ Act, § 45.

² Act, §§ 39, 41, 43, 46, 66, 67.

the payee or indorsee in a bill payable to order, but not a person holding under a forged indorsement), or by some person authorised to receive payment on his behalf, at a reasonable hour on a business day, at the proper place, as after defined, either to the person designated by the bill as payer, or to some person authorised to pay or refuse payment on his behalf, if, with the exercise of reasonable diligence, such person can there be found. It is not necessary to present to a referee in case of need. Presentment is not excused because of the acceptor's or drawee's bankruptcy, and presentment must be made to the bankrupt and not to his trustee. In the case of a company being wound up, presentment is made to the liquidator.

4. A bill is presented at the proper place—

- (a) Where a place of payment is specified in the bill and the bill is there presented. Presentment to the acceptor is not sufficient where a place of payment is specified. Where a bill is domiciled at a bank in a town in which there is a clearing-house, presentment through the clearing-house is deemed presentment at the bank. Where there are alternative places of payment, presentment at one of these places is sufficient. Where a bill is accepted payable at a particular place and the acceptor dies before the bill matures, presentment at the place of payment is sufficient. It is also sufficient presentment if the bill be presented at the place of payment specified in the

bill, although the acceptor may have left there.

- (b) Where no place of payment is specified, but the address of the drawee or acceptor is given in the bill, and the bill is there presented. In a recent case where on a bill no place of payment was specified, but the address of the acceptor was given, and payment had been demanded at the acceptor's place of business, but not at his address as given on the bill, it was held that there had been no due presentment.¹
 - (c) Where no place of payment is specified and no address given, and the bill is presented at the drawee's or acceptor's place of business if known, and if not, at his ordinary residence if known.
 - (d) In any other case, if presented to the drawee or acceptor wherever he can be found, or if presented at his last known place of business or residence.
5. Where a bill is presented at the proper place, and, after the exercise of reasonable diligence, no person authorised to pay or refuse payment can be found there, no further presentment to the drawee or acceptor is required.
 6. Where a bill is drawn upon or accepted by two or more persons who are not partners, and no place of payment is specified, presentment must be made to them all. It is expedient in all such cases to have a place of payment specified. A refusal on the part of one does not, as in

¹ *Neill v. Dobson, Molle & Co.*, 1902, 4 F. 625.

the case of presentment for acceptance, dispense with presentment to the others.

7. Where the drawee or acceptor of a bill is dead and no place of payment is specified, presentment must be made to a personal representative if such there be, and, with the exercise of reasonable diligence, he can be found.
8. Where authorised by agreement or usage, a presentment through the post-office is sufficient. Should accidents happen at the post-office and delay arise thereby in the presentation of the bill, it is thought that the holder would not lose his right of recourse against the drawer and prior indorsers.

*Excuses for delay or non-presentment for payment.*¹—

Delay in making presentment for payment is excused when the delay is caused by circumstances beyond the control of the holder, and not imputable to his default, misconduct, or negligence, as for example by his sudden illness or death, or that of his agent entrusted with the bill for presentation, or in consequence of unavoidable business, or his distance from the post-office. When the cause of delay ceases to operate, presentment must be made with reasonable diligence. Presentment for payment is dispensed with (*a*) where, after the exercise of reasonable diligence, presentment as required by the Act cannot be effected. The fact that the holder has reason to believe that the bill will on presentment be dishonoured does not dispense with the necessity for presentment. Thus, where the drawer of a bill after its maturity wrote the holder accepting notice of non-payment, and admitting his liability to him in every way as though presentment

¹ Act, § 46.

had been made in the regular way, it was held that the bill *de facto* not having been presented, though the drawer was ignorant of the fact, there was no dispensation by the drawer of the consequences of non-presentment for payment. The fact of the acceptor's bankruptcy does not dispense with presentation. (*b*) Where the drawee is a fictitious person. (*c*) As regards the drawer, where the drawee or acceptor is not bound as between himself and the drawer to accept or pay the bill, and the drawer has no reason to believe that the bill would be paid if presented, as for example where the acceptor is an accommodation party. (*d*) As regards an indorser, where the bill was accepted or made for the accommodation of that indorser, and he has no reason to expect that the bill would be paid if presented. (*e*) By waiver of presentment, express or implied, as where the drawer induces the holder to delay presentment, or as where the acceptor having become bankrupt before maturity, and the holder did not present for payment, the drawers waived their right to plead non-presentment by letters subsequent to the date of maturity in which they asked for delay, and by implication acknowledged their liability.

Dishonour by non-payment.¹—A bill is dishonoured by non-payment when it is duly presented for payment and payment is refused or cannot be obtained, or when presentment is excused, and the bill is overdue and unpaid. The acceptor has the whole of the last day of grace within which to pay the bill, and consequently the holder has no right of action against him until the expiry of that day, though he is entitled at any time on the last day of grace to

¹ Act, § 47.

give notice of dishonour to the drawer and indorsees.¹ Subject to the provisions of the Act,² when a bill is dishonoured by non-payment an immediate right of recourse against the drawer and indorsers accrues to the holder.

*Notice of dishonour and effect of non-notice.*³—Subject to the provisions of the Act,⁴ when a bill has been dishonoured by non-acceptance or by non-payment, notice of dishonour must be given to the drawer and each indorser, and any drawer or indorser to whom such notice is not given is discharged, except in cases where the notice is excused or dispensed with; provided that (1) where a bill is dishonoured by non-acceptance, and notice of dishonour is not given, the rights of a holder in due course subsequent to the omission are not prejudiced by the omission; (2) where a bill is dishonoured by non-acceptance and due notice of dishonour is given, it is not necessary to give notice of a subsequent dishonour by non-payment, unless the bill shall in the meantime have been accepted.

Rules as to notice of dishonour.—Notice of dishonour, in order to be valid and effectual, must be given in accordance with the following rules: ⁵—

By whom.—The notice must be given by or on behalf of the holder, or by or on behalf of an indorser who at the time of giving it is himself liable on the bill. Notice of dishonour may be given by an agent, authorised to do so, either in his own name or in the name of any party entitled to give notice, whether that party be his principal or not.

Effect of notice by holder.—Where the notice is given

¹ *Kennedy v. Thomas*, [1894] L. R. 2 Q. B. 759.

² §§ 16, 22, 48, 51, 63 (2), 64, 67 (2), (4), 68 (7).

³ § 48. ⁴ §§ 29, 36 (3), 38 (2), 50.

⁵ Act, § 49.

by or on behalf of the holder, it is available for the benefit of all subsequent holders and all prior indorsers who have a right of recourse against the party to whom it is given.

Effect of notice by indorser.—Where notice is given by or on behalf of an indorser entitled to give notice as before provided, it is available for the benefit of the holder and all indorsers subsequent to the party to whom notice is given.

Mode of giving notice.—The notice may be given in writing or by personal communication—a mode of giving notice which is not recommended—and may be given in any terms which sufficiently identify the bill (as by specifying its date, sum, and the parties to it), and intimate that the bill has been dishonoured by non-acceptance or non-payment, as the case may be. The fact of its having been noted or protested, and that recourse is claimed against the party to whom the notice is given, should be intimated. (For form, see p. 53, substituting the word non-payment for non-acceptance where the notice relates to non-payment.) The onus of proving notice is on the holder. The identification of the bill need only be such as to leave the party notified in no doubt as to the bill referred to, and consequently notice to a person unaccustomed to deal with bills, or who has his name only to one or two, need not be so detailed as that to a person in business, who is in the habit of frequently subscribing bills, and who therefore may have difficulty in identifying a particular bill in the absence of precise details.

Implied notice of dishonour.—The return of a dishonoured bill to the drawer or an indorser is, in point of form, deemed a sufficient notice of dishonour.

Unsigned notice.—A written notice need not be signed.

Insufficient notice.—An insufficient written notice may be supplemented and validated by verbal communication.

Wrong description in notice.—A misdescription of the bill, as for example where it is described as a note, where it is wrongly said to be payable at a particular bank, where the drawer is described as the acceptor, or generally any misdescription which could not mislead the person to whom notice is given, does not vitiate the notice, unless the party to whom notice is given is in fact misled thereby. But where the notice is one which could not reasonably mislead a drawer or indorser, a mere plea to the effect that he was in point of fact misled is not sufficient.

To whom notice may be given.—Where notice of dishonour is required to be given to any person, it may be given either to himself or to his agent in that behalf. Notice to his solicitor is not, but notice to a merchant's clerk given at his counting-house is sufficient. Where a person acts as secretary of two companies, a fact which comes to his knowledge as secretary of one company is not notice to him as secretary of the other company from the mere existence of the common relationship. In order to make it notice it must be shown that it was his duty to the first company to communicate his knowledge to the second company.¹ It is advisable to give notice to all persons liable on the bill. A referee in case of need is not, for this purpose, the agent of the person inserting his name. Where the drawer or indorser is dead, and the party giving notice

¹ *In re Fenwick, Stobart & Co. Ltd.*, [1902] 1 Ch. 507.

knows it, the notice must be given to a personal representative if such there be, and, with the exercise of reasonable diligence, he can be found. Where the drawer or indorser is bankrupt, notice may be given either to the party himself or to his trustee. Where there are two or more drawers or indorsers who are not partners, notice must be given to each of them, unless one of them has authority to receive such notice for the others.

Time for giving notice.—The notice may be given as soon as the bill is dishonoured, and must be given within a reasonable time thereafter. In the absence of special circumstances, notice is not deemed to have been given within a reasonable time unless (*a*) where the person giving and the person to receive notice reside in the same place, the notice is given or sent off in time to reach the latter on the day after the dishonour of the bill, non-business days being excluded; or (*b*) where the person giving and the person to receive notice reside in different places, the notice is sent off on the day after the dishonour of the bill, if there be a post at a convenient hour on that day, and if there be no such post on that day, then by the next post thereafter, non-business days being excluded. In one case a bill which had been received by a country bank from a customer was forwarded to the London bank, and was presented for payment and dishonoured on a Saturday, and on the following Monday notice of dishonour was given by returning it to the branch bank, from which it had been sent for presentation. By inadvertence the letter was wrongly addressed, and on the day following notice of dishonour was correctly given by telegram. It was held that the letter and telegram constituted one continuing act, and

that notice of dishonour had been timeously given.¹

Notice by agent.—Where a bill when dishonoured is in the hands of an agent, he may either himself give notice to the parties liable on the bill, or he may give notice to his principal. If he give notice to his principal, he must do so within the same time as if he were the holder, and the principal, upon receipt of such notice, has himself the same time for giving notice as if the agent had been an independent holder.

Notice to remote parties.—Where a party to a bill receives due notice of dishonour, he has, after receipt of such notice, the same period of time for giving notice to antecedent parties that the holder has after the dishonour.

Miscarriage of notice in post.—Where a notice of dishonour is duly addressed and posted, the sender is deemed to have given due notice of dishonour, notwithstanding any miscarriage by the post-office. Where a notice is not properly addressed, the party giving notice must prove that it was duly delivered. If a holder does not know the address of an indorser, he is entitled to time to make inquiries.

*Delay in giving notice of dishonour excused.*²—Delay in giving notice of dishonour is excused where the delay is caused by circumstances beyond the control of the party giving notice, and not imputable to his default, misconduct, or negligence. When the cause of delay ceases to operate, the notice must be given with reasonable diligence.

Notice of dishonour dispensed with.—Notice of dishonour is dispensed with (a) when, after the exercise

¹ *Fielding v. Corry*, [1898] L. R. 1 Q. B. 268.

² Act, § 50.

of reasonable diligence, notice as required by the Act cannot be given to, or does not reach the drawer or indorser sought to be charged ; but failure by the holder of a bill, after the exercise of reasonable diligence at the time the bill is dishonoured, to find the drawer of the bill at the address he has given, does not dispense with notice of dishonour if an address at which the drawer is to be found comes to the knowledge of the holder. (b) By waiver, express or implied, notice of dishonour may be waived before the time of giving notice has arrived, or after the omission to give due notice. Private knowledge on the part of the person to whom notice should be given does not imply waiver, and does not therefore dispense with notice, but waiver of notice by an indorser does not affect parties prior to him. (c) *As regards the drawer*, in the following cases, namely, (1) where drawer and drawee are the same person ; (2) where the drawee is a fictitious person, or a person not having capacity to contract ; (3) where the drawer is the person to whom the bill is presented for payment, or where the bill is made payable at his house ; but where the bill is signed by the drawer in order to accommodate the acceptor, the drawer is entitled to notice ; (4) where the drawee or acceptor is, as between himself and the drawer, under no obligation to accept or pay the bill ; (5) where the drawer has countermanded payment. (d) *As regards the indorser*, in the following cases, namely, (1) where the drawee is a fictitious person, or a person not having capacity to contract, and the indorser was aware of the fact at the time he indorsed the bill ; (2) where the indorser is the person to whom the bill is presented for payment, as where he becomes the executor of the acceptor. (Where the bill is not duly

stamped, no notice of dishonour need be given, as the holder must take action, not on the bill, but for the consideration for which the bill was granted. A guarantor for the due payment of a bill by the acceptor is not entitled to notice); (3) where the bill was accepted or made for his accommodation.

Noting or protest of Bill.¹—(1) Where an inland bill has been dishonoured, it may, if the holder think fit, be noted for non-acceptance or non-payment as the case may be, but it is not necessary to note or protest any such bill in order to preserve recourse against the drawer or indorser. Protest is, however, necessary in order to warrant in Scotland summary diligence on the bill. The noting is a marking put on the bill by the notary public recording the presentation of the bill for acceptance or payment, and is designed to refresh the memory of the notary when extending the protest as to the date when presentation was made. The following is the usual memorandum of noting put upon bills:—1/7/1920. Pnp. (protest for non-payment) A. M'N., N.P., or pnac. (protest for non-acceptance) A. M'N., N.P. (2) Where a foreign bill, appearing on the face of it to be such, has been dishonoured by non-acceptance, it must be duly protested for non-acceptance; and where such a bill which has not been previously dishonoured by non-acceptance is dishonoured by non-payment, it must be duly protested for non-payment. If it be not so protested, the drawer and indorsers are discharged. A foreign bill payable on demand need not be protested to preserve the right of recourse of a holder in due course, provided it be presented for payment before it has been in circulation for an unreasonable length

¹ Act, § 51.

of time. Where a bill does not appear on the face of it to be a foreign bill, protest in case of dishonour is unnecessary.

Successive protests.—A bill which has been protested for non-acceptance may be subsequently protested for non-payment.

Time for noting and protesting.—Subject to the provisions of the Act, when a bill is noted or protested, it may be noted on the day of its dishonour and must be noted not later than the next succeeding business day. The Act of 1882 required bills to be noted on the day of dishonour. By the “Bills of Exchange” (Time of Noting), Act, 1917, it is provided that a bill “may be noted on the day of its dishonour and must be noted not later than the next succeeding business day.”¹ When a bill has been duly noted, the protest may be subsequently extended as of the date of the noting.² Where the extended protest bears that the bill was protested on a date different from that on which the bill itself bears that the protest was noted, any diligence following thereon is inept.

Protest for better security.—Where the acceptor of a bill becomes bankrupt or insolvent, or suspends payment before it matures, the holder may cause the bill to be protested for better security against the drawer and indorsers. No right of recourse accrues to him till the date of maturity. A bill in such circumstances may be accepted *supra* protest. In Scotland, where during the currency of a bill a party liable on it becomes *vergens ad inopiam* (i.e. approaching insolvency), the holder may obtain diligence and use inhibitions so as to prevent the heritable property

¹ For Act, see Appendix.

² *M'Pherson v. Wright*, 1885, 12 R. 942.

being disposed of, or use arrestments attaching the moveable property. The diligence is only granted on an averment of *vergens ad inopiam*, which the person applying for the diligence must take upon himself the responsibility of averring. While no similar diligence is competent in England there if the acceptor or any other person liable on the bill commits an act of bankruptcy during its currency, the holder can take proceedings for his debt, the reason being that where a bill is given in payment of a debt it is an extension of credit, and the committing of the act of bankruptcy terminates the credit and permits the holder to sue at once.

Place of protest.—A bill must be protested at the place where it is dishonoured (as to places where there is no notary, see p. 94), provided that (a) when a bill is presented through the post-office and returned by post dishonoured, it may be protested at the place to which it is returned, and on the day of its return if received during business hours, and if not received during business hours then not later than the next business day ; (b) when a bill drawn at the place of business or residence of some person other than the drawee has been dishonoured by non-acceptance, it must be protested for non-payment at the place where it is expressed to be payable, and no further presentment for payment to or demand on the drawee is necessary.

Requisites of protest.—A protest must contain a copy of the bill, and must be signed by the notary making it, and must specify (a) the person at whose request the bill is protested ; (b) the place and date of protest, the cause or reason for protesting the bill, the demand made, and the answer given, if any, or the fact that the drawee or acceptor could not be found. Where

a bill is made payable at the creditor's own office, and on the day of payment the debtor or some one on his behalf is not there to pay or refuse payment, the proper form of protest is to record the fact that the drawee or acceptor could not be found at the place of payment, and not to insert in the protest that the bill was "presented at the place where payable, to a clerk there, who made answer that no funds had been provided to meet said bill, and payment was refused accordingly."¹ Although the protest must be made by a notary, it is not necessary that he should be present when the bill is presented, and he is warranted in making the protest upon the report of his clerk or other trustworthy person. The protest may be issued in duplicate or triplicate, but all such parts must be duly stamped. Where the duty on the bill or note does not exceed one shilling, the duty on the protest is the same as on the bill. In any other case the duty is one shilling.

Protest of lost Bill.—Where a bill is lost or destroyed, or is wrongly detained from the person entitled to hold it, a protest may be made on a copy or written particulars thereof.

When protest may be dispensed with.—Protest is dispensed with by any circumstance which would dispense with notice of dishonour (see p. 63). Delay in noting or protesting is excused when the delay is caused by circumstances beyond the control of the holder, and not imputable to his default, misconduct, or negligence. The want of a notary does not excuse delay in noting or protesting. When the cause of delay ceases to operate, the bill must be noted or protested with reasonable diligence (s. 49).

¹ *Bartsch v. Poole & Co.*, 1895, 23 R. 329.

Duties of holder as regards drawee or acceptor.¹

—(1) When a bill is accepted generally, presentment for payment is not necessary in order to render the acceptor liable. A debtor is bound at common law to find out his creditor and pay him. In Scotland, where summary diligence is alone competent, and in a question confined to the holder and acceptor, a bill may be presented and summary diligence proceeded with at any time within six months after the maturity of the bill. (2) Where, by the terms of a qualified acceptance, presentment for payment is required, the acceptor, in the absence of an express stipulation to that effect, is not discharged by the omission to present the bill for payment on the day it matures. Should, however, the acceptor qualify his acceptance to the effect that he was only to be liable if the bill was presented on its due date, or within a certain specified time thereafter, he would be freed from his obligation if the bill were not so presented. (3) In order to render the acceptor of a bill liable, it is not necessary to protest it, or that notice of dishonour should be given to him. (4) Where the holder of a bill presents it for payment, he must exhibit the bill to the person from whom he demands payment; and when a bill is paid, the holder must forthwith deliver it up to the party paying it. Payments to account are usually marked on the back of the bill, and initialed by the person receiving the money, By sect. 9 of the Finance Act of 1895, payments to account marked upon the back of a bill to the value of two pounds and upwards are liable in one penny of stamp duty.

¹ Act, § 52.

CHAPTER VII

LIABILITIES OF PARTIES

FUNDS in hands of drawee.¹—A bill of itself does not in England or Ireland operate as an assignment of funds in the hands of the drawee available for the payment thereof, and the drawee of a bill who does not accept as required by the Act is not liable on the instrument. This does not apply to Scotland.

In Scotland, Bill operates as an intimated assignation.—In Scotland, where the drawee of a bill has in his hands funds available for the payment thereof, the bill operates as an assignment of the sum for which it is drawn in favour of the holder from the time when the bill is presented to the drawee. This rule of law will be the better understood by an example. Suppose *A.* is indebted to *B.*, while *C.* is indebted to *A.* *B.* calls upon *A.* for payment of his debt, and in satisfaction thereof *A.* draws a bill upon *C.*—thus, one month after date pay to *B.* or order the sum of, etc. (as in the form given at p. 4). The bill would of course be addressed to *C.* as drawee. On the presentation of that bill to *C.*, whether he accepted it or not, if *C.* had in his hands funds belonging to *A.*, or was indebted to *A.* in any sum, the presentation of the bill operated as an intimated assignation of the funds in *C.*'s hands in favour of *B.* *C.* could not thereafter pay *A.* the debt

¹ Act, § 53.

due up to the amount of the bill, but would be bound to account to *B*. Questions might arise if bankruptcy ensued, but it is unnecessary here, as explaining the above rule of law, to deal with such questions. Bills are preferable according to their respective dates of presentation to the drawee. (See further, as to effect of presentation, under Cheques, p. 132.)

The acceptance of a bill payable at a banker's is authority to the banker to pay the bill to the extent of the balance at the acceptor's credit when the bill is presented for payment, and it is the banker's duty to his customer, the acceptor, to act on the authority and pay accordingly. Where a banker has funds in his hands, but insufficient to meet the bill, the practice in Scotland is to transfer the amount standing at the credit of the customer to a special account referable to the bill, and to retain the amount until the matter is judicially determined or arranged between the parties.

Liability of the acceptor.¹—The acceptor of a bill by accepting it (1) engages that he will pay it according to the tenor of his acceptance; that is, if the acceptance be unqualified, that he will pay the bill at maturity; if qualified, that he will pay subject to the qualification; (2) is precluded from denying to a holder in due course (*a*) the existence of the drawer, the genuineness of his signature, and his capacity and authority to draw the bill; (*b*) in the case of a bill payable to drawer's order, the then capacity of the drawer to indorse, but not the genuineness or validity of his indorsement; (*c*) in the case of a bill payable to the order of a third person, the existence of the payee, and his then capacity to indorse, but not the genuineness or validity

¹ Act, § 54.

of his indorsement. The decision in *Macmillan & Arthur v. The London Joint Stock Bank Limited* (see p. 128) does not alter the established legal principle that an indorsee of a bill of exchange for value has no legal claim against the acceptor, against whom no want of *bonâ fides* can be alleged for a sum beyond the amount for which the acceptance was given on the ground of negligence in his having given his acceptance to a bill in such a form and impressed with such a stamp as enabled the drawer to commit a forgery by enlarging the amount for which the acceptance was granted in such a way as to escape detection by the indorsee. The acceptor may refuse to pay on the ground that the payee's signature is forged. Where a bill is accepted by two persons jointly, and is at maturity paid by one of them in a claim of relief by the person who has paid the bill against the other acceptor, it is competent to prove by parole evidence the true nature of the transaction between the acceptors and their reciprocal obligations.¹

Liability of drawer.²—The drawer of a bill by drawing it (*a*) engages that on due presentment it shall be accepted and paid according to its tenor, and that if it be dishonoured he will compensate the holder or any indorser who is compelled to pay it, provided that the requisite proceedings on dishonour be duly taken; (*b*) is precluded from denying to a holder in due course the existence of the payee, and his then capacity to indorse.

Liability of indorser.—The indorser of a bill by indorsing it (*a*) engages that on due presentment it shall be accepted and paid according to its tenor, and that if it be dishonoured he will compensate the

¹ *Crosbie v. Crosbie's Trs.*, 1902, 3 F. 83.

² Act, § 55.

holder or a subsequent indorser who is compelled to pay it, provided that the requisite proceedings on dishonour be duly taken; (b) is precluded from denying to a holder in due course the genuineness and regularity in all respects of the drawer's signature, and all previous indorsements; (c) is precluded from denying to his immediate or a subsequent indorsee that the bill was at the time of his indorsement a valid and subsisting bill, and that he had then a good title thereto.

Liability of successive indorsers, *inter se*.—The liabilities *inter se* of successive indorsers of a bill must, in the absence of evidence to the contrary, be determined according to the ordinary principles of the law merchant, whereby a prior indorser must indemnify a subsequent one. But the whole circumstances attendant upon the making, issue, and transference of a bill or note may be legitimately referred to for the purpose of ascertaining the true relation to each other of the parties who put their signatures upon it, either as drawers or indorsers; and reasonable inferences derived from these facts and circumstances are admitted, to the effect of qualifying, altering, or even inverting the relative liabilities which the law merchant would otherwise assign to them. Thus where three directors of a company mutually agreed with each other to become sureties to a bank for the same debts of a company, and in pursuance of that agreement successively indorsed a promissory note of the company, it was held they were entitled and liable to equal contribution *inter se*, and that they were not liable to indemnify each other successively according to the priority of their indorsements.¹

¹ *Macdonald v. Whitfield*, 1883, L. R. 8 App. Cases, 733.

Liability of stranger signing Bill.¹—Where a person signs a bill otherwise than as a drawer or acceptor, he thereby incurs the liabilities of an indorser to a holder in due course, and that although he signs at the place where it is usual for the acceptor to sign. Such a signature is known as one *per aval* (*aval* said to be an antiquated word signifying underwriting), and by the law merchant (p. 95) is available only to a person who thereafter takes the bill. He, therefore, incurs no liability to the drawer, nor has he any right of recourse against the drawer unless he has signed on the drawer's behalf. As no one can sign a bill as an acceptor except the drawee, a referee in case of need, or an acceptor for honour, a stranger cannot sign as an acceptor to a bill, and if he sign expressly as acceptor, as for example "accepted, John Smith," his signature is wholly inoperative. One who subscribes a bill *per aval* really occupies the position of a cautioner, but the addition of that or a similar word, while indicating the character in which he subscribes, does not in any way limit or alter his liability.

Measure of damages against parties to dishonoured Bill.²—Where a bill is dishonoured either by non-acceptance or non-payment, the amount which the holder is entitled to recover is as follows:—He may recover from any party liable on the bill, and the drawer who has been compelled to pay the bill may recover from the acceptor, and an indorser who has been compelled to pay the bill may recover from the acceptor, or from the drawer, or from a prior indorser, (a) the amount of the bill; (b) interest thereon from the time of presentment for payment, if

¹ Act, § 56.

² Act, § 57.

the bill is payable on demand, and from the maturity of the bill in any other case—(as to rate of interest, see p. 9); (c) the expenses of noting, and when protest is necessary, and the protest has been extended, the expenses of protest.

Bill dishonoured abroad.—In the case of a bill which has been dishonoured abroad, in lieu of the above damages, the holder may recover from the drawer or an indorser, and the drawer or an indorser who has been compelled to pay the bill may recover from any party liable to him, the amount of the re-exchange, with interest thereon until the time of payment. Under this section it has been decided by the Court of Appeal that the drawer of a foreign bill upon an acceptor in England is entitled, upon the bill being dishonoured and protested, to recover from the acceptor damages in the nature of re-exchange, which the drawer is by the foreign law liable to pay to the holder of the bill.¹

Interest as damages.—Where by the Act interest may be recovered as damages, such interest may, if justice requires it, be withheld wholly or in part; and where a bill is expressed to be payable with interest at a given rate, interest as damages may or may not be given at the same rate as interest proper.

Transferor by delivery—Meaning of term, and liability of such person.²—Where the holder of a bill payable to bearer (which includes a bill indorsed in blank) negotiates it by delivery without indorsing it, he is called a “transferor by delivery.” A transferor by delivery is not liable on the instrument. Thus, where the holder of a bill which has been

¹ *Ex parte Roberts, In re Gillespie*, 56 L. J. Q. B. 74; affd. 1886, 18 Q. B. D. 286 (C. A.).

² Act, § 58.

indorsed in blank discounts it without indorsing it, and the bill is subsequently dishonoured, he is not bound to repay the sum received.

Transferor's warrant to transferee.—A transferor by delivery, who negotiates a bill, thereby warrants to his immediate transferee, being a holder for value, that the bill is what it purports to be, that he has a right to transfer it, and that at the time of transfer he is not aware of any fact which renders it valueless. If any of these considerations fail, he is liable to the transferee in compensation, not, however, on the bill, but for damages in respect of misrepresentation.

CHAPTER VIII

DISCHARGE OF A BILL

HOW a Bill is discharged.¹—A bill is discharged by payment in due course by or on behalf of the drawee or acceptor. Payment in due course means payment made at or after the maturity of the bill to the holder of it (or to his authorised agent), in good faith, and without notice that his title to the bill is defective. Payment does not necessarily mean the handing over of actual cash. Stated broadly, a bill is discharged in like manner to the discharge of an ordinary contract. The holder of a bill is not bound to accept a partial payment. A bill should not be delivered up as paid against receipt of a cheque until the cheque has been paid by the bank on which it is drawn. When a bill has been discharged all rights of action on it are thereby extinguished, and thereafter no one can become a holder in due course of the bill. While the bill may be discharged there are still certain rights competent to the parties thereto. Hence if a bill is paid by one of two or more acceptors the bill is discharged, but the acceptor who pays has still his remedy against his co-acceptor or co-acceptors for their share of the bill. Again, where a person accepts an accommodation bill and pays it at maturity, he has his remedy against the party for whose benefit he accepted.

¹ Act, § 59.

A bill may be also discharged by *confusion* (see p. 79); by *renunciation* (see p. 80); by *cancellation* (see p. 81); by *compensation*—(that is, where one person who is under obligation to another acquires against that other a right of the same kind, so that each is the obligee of the other, the respective obligations are said to compensate or extinguish each other. Suppose, in a case between drawer and acceptor, that when the bill fell due the drawer was indebted to the acceptor, the acceptor would be entitled to set off the sum due to him by the drawer as against the amount due under the bill;—by *novation*—a term used in Scotland but not in England—(that is, the substitution, with the creditor's consent, of one obligation by the debtor for another, the second obligation taking the place of the first, and the position of the parties remaining the same. An example of novation is where a new bill is granted, and the old one given up. In England the term "novation" is not used, but the result is the same, subject to this qualification that in England, if the second bill be dishonoured, the rights of the parties on the first bill revive, whereas in Scotland the creditor must proceed on the second bill. But where a bill is granted for an advance on loan, the mere granting of a new bill and the giving up of the old bill do not operate as a discharge of the claim for interest upon the loan);¹—by *delegation*—a term used in Scotland but not in England—(that is, the substitution, with the creditor's consent, of one debtor for another, whereby the original debtor is discharged)—or in England by the Statute of Limitations, and in Scotland by *prescription* (see p. 79). While prescription extinguishes

¹ *Hope Johnstone v. Hope Johnstone's Exrs.*, 1895, 22 R. 314.

the bill, it does not discharge the debt for which the bill was granted. It is otherwise under the Statute of Limitations. The bill, in certain circumstances, may not be extinguished by the mere lapse of six years. Subject to the provisions to be immediately noticed with regard to accommodation bills, when a bill is paid by the drawer or an indorser it is not discharged, but (a) Where a bill payable to or to the order of a third party is paid by the drawer, the drawer may enforce payment thereof against the acceptor, but may not re-issue the bill. The word "paid" as here used means paid at or after the maturity of the bill. Consequently if, during the currency of the bill, it has been negotiated back to the drawer, he may re-issue and further negotiate it. (b) Where a bill is paid by an indorser, or where a bill payable to drawer's order is paid by the drawer, the party paying it is remitted to his former rights as regards the acceptor or antecedent parties, and he may, if he thinks fit, strike out his own and subsequent indorsements and again negotiate the bill. The subsequent indorsers in such a case are discharged by the payment to the drawer or prior indorsers, and consequently, even if the bill be negotiated after payment and without cancellation of the signatures of the payer and subsequent indorsers, the indorsee can have no claim against such parties, as in these circumstances no holder can be a holder in due course. Where an accommodation bill is paid in due course by the party accommodated, the bill is discharged.

*By confusion.*¹—When the acceptor is or becomes the holder of it at or after its maturity in his own right, the bill is discharged. In Scotland this mode

¹ Act, § 61.

of discharge is following the civil law referred to as a discharge by "confusion." In England the word "confusion" is not used, but there it is said "there is no principle by which a man can be at the same time plaintiff and defendant." The expression "in his own right" is not used in contradistinction to a right in a representative capacity, but indicates a right not subject to that of another person, and good against all the world.¹ Hence, if the acceptor become the holder as executor, trustee, or other similar capacity, the bill is not discharged.

*Express waiver—Renunciation.*²—Where the holder of a bill at or after its maturity absolutely and unconditionally renounces his rights against the acceptor, the bill is discharged. The renunciation may be verbal if it be at the same time accompanied by the delivery of the bill. Otherwise the renunciation must be in writing, and it must be a record of an absolute and unconditional renunciation of the holder's rights on the bill. A memorandum made by or with the authority of the holder, whether signed by him or not, to the effect that he renounces his rights, is not sufficient; but such a writing, or even a letter expressing intention to renounce, might go to prove that a subsequent handing of the bill to the acceptor was made with that intention. The effect of such renunciation is to release the acceptor from all liability on the bill to the holder, or anyone claiming through him.

Conditional renunciation.—Renunciation may be made conditional, and until the condition is purified there is no renunciation.³ Though the holder may in such circumstances be meantime barred from enforcing

¹ *Nash v. De Freville*, [1900] 2 Q. B. (C.A.) 72.

² Act, § 62.

the bill, there is nothing to prevent him from negotiating it to a new holder for value, who will not be affected by his disabilities, and may enforce payment of the bill whether the condition be purified or not. The liabilities of any party to a bill may in like manner be renounced by the holder before, at, or after its maturity; but the provision just stated does not affect the rights of a holder in due course without notice of the renunciation.

*By cancellation.*¹—Where a bill is intentionally cancelled by the holder or his agent, and the cancellation is apparent, the bill is discharged.

In like manner, any party liable on a bill may be discharged by the intentional cancellation of his signature by the holder or his agent. In such a case any indorser, who would have had a right of recourse against the party whose signature is cancelled, is also discharged.

A cancellation made unintentionally, or under a mistake, or without the authority of the holder, is inoperative; but where a bill, or any signature thereon, appears to have been cancelled, the burden of proof lies on the party who alleges that the cancellation was made unintentionally, or under a mistake, or without authority.² Summary diligence would, however, in Scotland be incompetent upon such a bill. There is no like diligence in England. Where an agent is employed by the holder of a bill to receive payment of it from the acceptor, and receives payment from him clogged with a condition, without assent to which the holder is not entitled to retain the money paid, the

¹ Act, § 63.

² *Bank of Scotland v. Dominion Bank*, 1889, 16 R. 1081; 1891, 18 R. (H. L.) 21.

agent is not entitled to treat such conditional payment as if it were an absolute payment, and to cancel the bill before he has received the assent to the condition.

Alterations on Bill.¹—Where a bill or acceptance is materially altered without the assent of all parties liable on it, the bill is avoided, except as against a party who has himself made, authorised, or assented to the alteration, and subsequent indorsers. The holder may sue on the original debt, though he cannot sue on the bill. A bill may be altered before issue, that is, before its delivery complete in form to a person who takes it as a holder for value, so as to be able to enforce payment thereof, as until then there is no completed contract on the bill. A material alteration after issue renders a bill a new instrument, requiring a fresh stamp.

Non-apparent alteration.—Where a bill has been materially altered, but the alteration is not apparent, and the bill is in the hands of a holder in due course, such holder may avail himself of the bill as if it had not been altered, and may enforce payment of it according to its original tenor.²

Alterations which are material.—The following alterations are material, namely, any alteration of the date, the sum payable, the time of payment, the place of payment, and where a bill has been accepted, generally the addition of a place of payment without the acceptor's assent. A mere correction is not a material alteration, nor is the addition of words which do not alter the effect of the bill as issued. Again, the substituting of "us" for "me" and "our" for "my" in a firm's bill are not material alterations.³

¹ Act, § 64.

² *Scholfield v. E. of Londesborough*, [1896] L. R. A. C. 514.

³ *Speirs & Knox v. Semple*, 1901, 9 S. L. T. 153.

CHAPTER IX

ACCEPTANCE AND PAYMENT FOR HONOUR

ACCCEPTANCE for honour *supra* protest.¹—Such acceptances are rarely met with in practice. An acceptance for honour is equivalent to saying to the holder of the bill, “Keep this bill; don’t return it, and when the time arrives at which it ought to be paid, if it is not paid by the party on whom it was originally drawn, come to me and you shall have the money.” Where a bill has been protested for dishonour by non-acceptance, or protested for better security (see p. 66), and is not overdue, any person not being a party already liable thereon may, with the consent of the holder, intervene and accept the bill *supra* protest, for the honour of any party liable thereon, or for the honour of the person for whose account the bill is drawn, but not for the honour of the drawee, as till acceptance he is not liable on the bill; nor for the honour of an indorser who has indorsed restrictively or in a representative capacity (though it may be for the honour of his principal); nor for the honour of an indorser who has negotiated the bill back to the holder; nor for any party against whom recourse has been lost by failure to negotiate, or whose obligation has been discharged.

Partial acceptance.—A bill may be accepted for

¹ Act, § 65.

honour for part only of the sum for which it is drawn. Without the drawer's consent, no other qualified acceptance can be taken by the holder.

Requisites.—An acceptance for honour *supra* protest, in order to be valid, must (a) be written on the bill, and indicate that it is an acceptance for honour ; (b) be signed by the acceptor. No special form of words is necessary. The form usually adopted is "Accepted for the honour of A. B. *supra* protest," or simply "Accepted S.P.," and signed. Where an acceptance for honour does not expressly state for whose honour it is made, it is deemed to be an acceptance for the honour of the drawer.

Maturity of Bill.—Where a bill payable after sight is accepted for honour, its maturity is calculated from the date of the noting for non-acceptance, and not from the date of the acceptance for honour.

*Liability of acceptor for honour.*¹—The acceptor for honour by accepting it engages that he will on due presentment pay the bill, according to the tenor of his acceptance, if it is not paid by the drawee, provided it has been duly presented for payment, and protested for non-payment, and that he receives notice of these facts. The acceptor for honour is liable to the holder and to all parties on the bill subsequent to the party for whose honour he has accepted. Any defence competent to an acceptor is also competent to the acceptor for honour.

*Presentment for payment to acceptor for honour.*²—Where a dishonoured bill has been accepted for honour *supra* protest, or contains a reference in case of need, it must be protested for non-payment before it is presented for payment to an acceptor for honour, or referee

¹ Act, § 66.

² Act, § 67.

in case of need. It is not necessary to extend the protest, noting being sufficient.

Place and time of presentment.—Where the address of the acceptor for honour is in the same place where the bill is protested for non-payment, the bill must be presented to him not later than the day following its maturity; and where the address of the acceptor for honour is in some place other than the place where it is protested for non-payment, the bill must be forwarded not later than the day following its maturity, for presentment to him. Non-business days are excluded.

Delay in presentment.—Delay in presentment, or non-presentment, is excused by any circumstance which would excuse delay in presentment for payment, or non-presentment for payment (see p. 57).

Protest for non-payment.—When a bill is dishonoured by the acceptor for honour, it must be protested for non-payment by him.

Payment for honour *supra* protest.¹—Where a bill has been protested for non-payment, any person may intervene and pay it *supra* protest for the honour of any party liable thereon, or for the honour of the person for whose account the bill is drawn. A person who takes up a bill *supra* protest for the benefit of a particular party succeeds to the title of the person from whom, not for whom, he receives it, and has all the title of such person to sue upon the bill, except that he discharges all the parties subsequent to the one for whose honour he accepts, and that he cannot himself indorse it over. The payment must be on behalf of a person already liable on the bill, and not for such a person as, for example, an indorser who has

¹ Act, § 68.

indorsed without recourse in a representative character or as an agent, nor for a person who through any cause has ceased to be liable before such payment is made.

Preference of payer.—Where two or more persons offer to pay a bill for the honour of different parties, the person whose payment will discharge most parties to the bill is entitled to the preference. A payment for the honour of the acceptor is preferable to one for the honour of the drawer, and a payment for the honour of the drawer to one for the honour of an indorser, and of a prior to a later indorser.

Notarial attestation of payment.—Payment for honour *supra* protest, in order to operate as such, and not as a mere voluntary payment, must be attested by a notarial act of honour, which may be appended to the protest, or form an extension of it. The notarial act of honour must be founded on a declaration made by the payer for honour or his agent in that behalf (who, in order to pay and take the necessary steps to preserve his principal's right of recourse against the person for whose honour the payment is made, must be specially authorised to do so), declaring his intention to pay the bill for honour, and for whose honour he pays.

Effect of payment.—Where a bill has been paid for honour, all parties subsequent to the person for whose honour it is paid are discharged; but the payer for honour is subrogated in and succeeds to both the rights and duties of the holder as regards the person for whose honour he pays, and all parties liable to that party.

Payer entitled to delivery of Bill.—The payer for honour, on paying to the holder the amount of the bill

and the notarial expenses incidental to its dishonour, is entitled to receive both the bill itself and the protest. If the holder do not on demand deliver them up, he is liable to the payer for honour in damages.

Holder refusing payment.—Where the holder of a bill refuses to receive payment *supra* protest, he loses his right of recourse against any party who would have been discharged by such payment.

CHAPTER X

LOST INSTRUMENTS

HOLDER'S right to duplicate of lost Bill.¹—Where a bill has been lost before it is overdue, the person who was the holder of it may apply to the drawer to give him another bill (which, being a new contract, requires the appropriate stamp), of the same tenor, giving security to the drawer, if required, to indemnify him against all persons whatever in case the bill alleged to have been lost shall be found again. If the drawer, on request as aforesaid, refuses to give such duplicate bill, he may be compelled to do so. In a question with the finder of the bill, the person in right of it has a good action for recovery of the instrument; but if it is in the possession of a holder in due course from such finder, no right of action for recovery against the holder exists. The person in right of the bill can recover from the finder whatever value he has received for it.

*Action on lost Bill.*²—In any action or proceeding upon a bill, the Court or Judge may order that the loss of the instrument shall not be set up, provided an indemnity be given to the satisfaction of the Court or Judge against the claims of any other person upon the instrument in question. Where a bill has been lost and the holder chooses to sue for the value he gave

¹ Act, § 69.

² Act, § 70.

for it, and not to found his action on the bill, he is nevertheless bound to give security to the satisfaction of the Court against other demands on the instrument, because the bill, if paid by the drawee, will be a complete discharge of the debt.

Notwithstanding the loss of a bill, the holder is bound to take the steps incumbent upon him.

Presentment for payment may be excused or dispensed with in certain cases, but the loss of the bill will not excuse delay in giving notice of dishonour, nor of protesting when necessary.

CHAPTER XI

BILLS IN A SET

FORM.

(Place and Date.)

£50.

At usance (or at two or more usances) pay this my first Bill of Exchange (second and third of the same tenor and date not paid) to *A. B.* or his order, within the Bank, fifty pounds sterling, at the current exchange, value received from him, and place the same to account as per advice (*or*, without further advice from).

To *E. F.*

(Address.)

(Sigd.) *C. D.*

E. F.

The phraseology of the other bills of the set differs from the above only in that they are respectively called "second" or "third" bill of exchange, and in stating "first and third" as to the one, and "first and second" as to the other.

*Rules as to sets.*¹—Where a bill is drawn in a set, each part of the set being numbered and containing a reference to the other parts, the whole of the parts constitute one bill. If they be not so numbered, one part of the set becomes a separate bill in the hands of a *bonâ fide* holder for value. Where the bills bear references to each other only one requires to be stamped. If they be not so numbered, each bill requires a separate stamp. Where the holder of a set indorses two

¹ Act, § 71.

or more parts to different persons he is liable on every such part, and every indorser subsequent to him is liable on the part he has himself indorsed, as if the said parts were separate bills. Where two or more parts of a set are negotiated to different holders in due course, the holder whose title first accrues is, as between such holders, deemed the true owner of the bill. Nothing in this subsection affects the rights of a person who in due course accepts or pays the part first presented to him. The acceptance may be written on any part, and it must be written on one part only. If the drawee accepts more than one part, and such accepted parts get into the hands of different holders in due course, he is liable on every such part as if it were a separate bill. When the acceptor of a bill drawn in a set pays it without requiring the part bearing his acceptance to be delivered up to him, and that part at maturity is outstanding in the hands of a holder in due course, he is liable to the holder thereof. Subject to the preceding rules, where any one part of a bill drawn in a set is discharged by payment or otherwise, the whole bill is discharged. (As to stamp duty on such bills, see p. 101.)

CHAPTER XII

MISCELLANEOUS PROVISIONS

CONFLICT of laws—Rules where laws conflict.¹—

Where a bill drawn in one country is negotiated, accepted, or payable in another, the rights, duties, and liabilities of the parties to it are determined as follows:—

Validity in point of form.—The validity of a bill as regards requisites in form is determined by the place of issue; and the validity as regards requisites in form of the supervening contracts, such as acceptance, indorsement, or acceptance *supra* protest, is determined by the law of the place where such contract is made. But (*a*) where a bill is issued out of the United Kingdom, it is not invalid by reason only that it is not stamped in accordance with the place of issue; and (*b*) where a bill issued out of the United Kingdom conforms, as regards requisites in form, to the law of the United Kingdom, it may, for the purpose of enforcing payment of it, be treated as valid between all parties who negotiate, hold, or become parties to it in the United Kingdom.

Interpretation.—Subject to the provisions of the Act, the interpretation of the drawing, indorsement, acceptance, or acceptance *supra* protest of a bill is determined by the law of the place where such

¹ § Act, 72.

contract is made. But where an inland bill is indorsed in a foreign country, the indorsement is, as regards the payer, interpreted according to the law of the United Kingdom.

Duties of holder.—The duties of the holder with respect to presentment for acceptance or payment, and the necessity for or sufficiency of a protest or notice of dishonour, or otherwise, are determined by the law of the place where the act is done or the bill is dishonoured.

Sum payable.—Where a bill is drawn out of but payable in the United Kingdom, and the sum payable is not expressed in the currency of the United Kingdom, the amount is, in the absence of some express stipulation, calculated according to the rate of exchange for sight drafts at the place of payment on the day the bill is payable.

Date of payment.—Where a bill is drawn in one country and is payable in another, the due date of it is determined according to the law of the place where it is payable.

Good faith—Meaning of term as used in Act.¹—A thing is deemed to be done in good faith within the meaning of the Act where it is in fact done honestly, whether it is done negligently or not. If a person has in his possession the means of knowing that a bill for which he is asked to give value has been stolen or otherwise fraudulently obtained, and the means of knowledge in his power are wilfully disregarded, he is not acting in good faith.

Signature.²—Where by the Act any instrument or writing is required to be signed by any person, it is not necessary that he should sign it with

¹ Act, § 90.

² Act, § 91.

his own hand, but it is sufficient if his signature is written thereon, by some other person by or under his authority. In the case of a corporation, where by the Act any instrument or writing is required to be signed, it is sufficient if the instrument or writing be sealed with the corporate seal. But nothing in the section is to be construed as requiring a bill or note of a corporation to be under seal.

Computation of time—Non-business day.¹—

Where by the Act the time limited for doing any act or thing is less than three days, in reckoning time non-business days are excluded. Non-business days for the purposes of the Act mean (a) Sunday, Good Friday, Christmas Day; (b) a bank holiday, under the Bank Holidays Act, 1871, or Acts amending it; (c) a day appointed by Royal proclamation as a public fast or thanksgiving day. Any other day is a business day. (For bank holidays, see p. 13.)

When noting equivalent to protest.²—For the purposes of the Act, where a bill or note is required to be protested within a specified time or before some further proceeding is taken, it is sufficient that the bill has been noted for protest before the expiration of the specified time or the taking of the proceeding, and the formal protest may be extended at any time thereafter as of the date of the noting.

Protest where services of notary cannot be obtained.—Where a dishonoured bill or note is authorised or required to be protested, and the services of a notary cannot be obtained at the place where the bill is dishonoured, any householder or substantial resident of the place may, in the presence of two witnesses, give a certificate signed by them attesting

¹ Act, § 92.

² Act, § 93.

the dishonour of the bill, and the certificate in all respects operates as if it were a formal protest of the bill. (For form of certificate, see p. 184.)

Rules not affected by Act.¹—The rules in bankruptcy relating to bills, promissory notes, and cheques continue to apply thereto notwithstanding anything contained in the Act. The rules of the common law including the law merchant, save in so far as they are inconsistent with the express provisions of the Act, continue to apply to bills, promissory notes, and cheques. By the term “law merchant” is meant the usages of merchants and traders in the different departments of commerce, ratified by the decisions of Courts of Law, which upon such usages being proved before them, have adopted them as settled law, with a view to the interests of trade and the public convenience. Nothing in the Act or in any repeal effected thereby affects (*a*) the provisions of the Stamp Act, 1870, or Acts amending it, or any law or enactment for the time being in force relating to the revenue ; (*b*) the provisions of the Companies Act, or Acts amending it, or any Act relating to joint stock banks or companies ; (*c*) the provisions of any Act relating to or confirming the privileges of the Bank of England or the Bank of Ireland respectively ; (*d*) the validity of any usage relating to dividend warrants or the indorsements thereof. This provision is intended not to interfere with the practice whereby certain companies pay dividend warrants drawn in favour of two or more persons on the signature of the first-named person.

Summary diligence.²—Nothing in the Act, or in any repeal effected thereby, extends or restricts or in

¹ Act, § 97.

² Act, § 98.

any way alters or affects the law and practice in Scotland in regard to summary diligence. This diligence is peculiar to the law of Scotland, and is an expeditious and cheap mode of enforcing payment of the amount due on a bill against all parties liable thereon. To warrant the diligence the following facts must coexist : (1) The bill must be complete and regular on the face of it. The diligence is not competent on a bill signed by a party's initials or by mark, nor on an undated bill, or one wanting in any material particular, nor on a bill accepted conditionally, nor on a bill so long as an ordinary action on it is depending ; (2) the bill must be duly noted ; and (3) the protest must be timeously extended.

Summary diligence proceeds on a protest of a bill or promissory note, either for non-acceptance or non-payment.—The protest may be registered in the Books of Council and Session, or in the Books of the Sheriff Court within the jurisdiction of which the person to be charged resides. Although a bill may be accepted payable in England, summary diligence is competent on a protest of the bill made by an English notary and recorded in the Scotch Courts against a party domiciled in Scotland. The protest must be registered within six months after the date of the bill in the case of non-acceptance, and within six months after the maturity of the bill in the case of non-payment. In bills payable on demand, the six months are reckoned from the date of presentation for payment, and not from the date of the bill. An extract of the registered protest contains a warrant to charge the party liable on the bill to pay the sum in the bill, with interest and charges. The practical effect of the extract is to place the creditor in the same position as if he had

obtained a decree against his debtor in an ordinary action in Court, and had obtained an extract of such decree. Summary diligence, it is thought, is competent on a householder's certificate of protest under section 94 of the Act.¹ A contrary opinion has, however, been expressed.²

Parole evidence allowed in certain judicial proceedings in Scotland.³—In any judicial proceeding in Scotland, any fact relating to a bill of exchange, bank cheque, or promissory note which is relevant to any question of liability thereon may be proved by parole evidence (that is, evidence by the oaths of witnesses, in contradistinction to evidence by the writ or oath of party). This provision alters the common law on the subject. Under the common law, facts relevant to a question of liability on a bill were in general only capable of being proved by the writ or oath of the holder of the instrument. After the passing of the Act considerable doubt was entertained whether parole proof was competent to contradict the express obligations of the *immediate* parties to a bill by an allegation of a verbal understanding or arrangement that these obligations were to be subject to conditions not appearing on the face of the instrument. The question has recently been answered by the Court in the affirmative. In the case referred to, it was decided that parole evidence is competent where, in reply to a demand for payment of a bill, the defender, while not denying liability, averred that he was not bound to pay it at the time. in respect of an arrangement entered into between him and the drawer when

¹ See *Somerville v. Aaronson*, 1898, 25 R. 524.

² Thorburn on Bills of Exchange Act, p. 207.

³ Act, § 100.

the bill was granted, that it was to be renewed from time to time on certain specified conditions.¹ The Act does not make parole proof of payment of a bill competent.²

Further, the section under consideration does not affect the law and practice whereby the party who is, according to the tenor of any bill of exchange, cheque, or promissory note, debtor to the holder in the amount thereof, may be required, as a condition of obtaining a sist of diligence or suspension of a charge or threatened charge, to make such consignation or to find such caution as the Court or Judge before whom the cause is depending may require. Nor does the section apply to any case where the bill of exchange, bank cheque, or promissory note has undergone the sexennial prescription. (See p. 103.)

Bills for less sums than twenty shillings.—(See Cheques, p. 108.)

Privileges of Bills.—Bills are probative though not holograph, nor granted *in re mercatoria*. They prove their dates without witnesses, and the designations of the drawer, acceptor, and indorsers are not essential.

Stamp Duty on Bills.—Inland notes of all kinds and inland bills payable otherwise than on demand, or at sight, or on presentation, or within three days after date or sight, must be drawn upon paper impressed with the appropriate stamp duty, and cannot be stamped after execution. The consent of parties will not obviate or remedy the objection. The following are the duties payable:—Bills payable on demand, or at sight, or on presentation, or within three days after date or sight, irrespective of the amount thereof, 2d.

¹ *National Bank of Australia v. Turnbull*, 1891, 18 R. 629.

² *Robertson v. Thomson*, 1900, 3 F. 5.

As regards other bills, where the amount or value of the money for which the bill or note is drawn or made does not exceed £5, £0 0 2

Exceeding £5, not exceeding £10, 0 0 2

„ 10, „ 25, 0 0 3

„ 25, „ 50, 0 0 6

„ 50, „ 75, 0 0 9

„ 75, „ 100, 0 1 0

For every £100, and also for any fractional

part of such sum, amount, or value, 0 1 0

The fact that a bill is payable with interest does not affect the stamp duty. The duty on bills of exchange drawn and expressed to be payable out of the United Kingdom, when actually paid or indorsed, or in any manner negotiated in the United Kingdom is, where the bill exceeds £50, sixpence ; and where the amount exceeds £100, sixpence for every £100, and also for any fractional part of £100. These duties are to be denoted by adhesive stamps. Such stamps must be put on the bill or note and cancelled before it is presented for payment, indorsed, transferred, or in any manner negotiated or paid. As a bill is not invalid by reason only that it is post-dated or ante-dated, it would appear that a bill executed on a paper bearing an impressed stamp of a date subsequent to that on which the bill appears to have been drawn is nevertheless valid and effectual. A bill of exchange or promissory note written on material bearing an impressed stamp of sufficient amount, but of improper denomination, may, however, be stamped with the proper stamp on payment of the duty and a penalty of forty shillings if the bill or note be not then payable according to its tenor, or of ten pounds if it be so payable. Every person who issues, indorses,

transfers, negotiates, presents for payment, or pays any bill of exchange or promissory note liable to duty which is not duly stamped is liable to a fine of ten pounds; and any person who takes or receives such a bill or note from any other person in payment, security, by purchase or otherwise, is not entitled to recover upon it, or to make it available for any purpose whatever. It has been held that an averment that a foreign promissory note, when originally presented for payment in the United Kingdom was unstamped, is irrelevant, since presentation without a stamp did not involve nullity.

Bills payable on demand.—(For amount of duty, see *supra*.)—The duty on a bill payable on demand may be denoted by an adhesive stamp. If the bill be drawn in the United Kingdom, the stamp must be cancelled by the person who signs the bill before he delivers it out of his hands, custody, or power. If any such bill is presented for payment unstamped, the person to whom it is presented for payment unstamped may affix thereto an adhesive stamp of one penny and cancel the same, as if he had been the drawer of the bill, and may thereupon pay the sum mentioned in the bill, and charge the duty in account against the person by whom the bill was drawn, or deduct the duty from the said sum. The bill is then, so far as respects the duty, deemed to be valid and available. This provision does not, however, relieve any person from any fine or penalty incurred by him in relation to such bill.

Foreign Bills.—Every person into whose hands any bill or promissory note drawn or made out of the United Kingdom comes in the United Kingdom before it is stamped, must, before he presents for payment, indorses, transfers, or in any manner negotiates or

pays the bill or note, affix thereto a proper adhesive stamp or stamps of sufficient amount, and cancel every stamp so affixed thereto. But if at the time when any such bill or note comes into the hands of any *bonâ fide* holder there is affixed thereto an adhesive stamp, effectually cancelled, the stamp is, as regards the holder, deemed to be duly cancelled, although it may not appear to have been affixed or cancelled by the proper person. If the stamp be not cancelled when the bill or note comes into the hands of a *bonâ fide* holder, it is competent for such holder to cancel the stamp as if he were the person by whom it was affixed, and upon his so doing the bill or note is deemed duly stamped, and as valid and available as if the stamp had been cancelled by the person by whom it was affixed. These provisions, however, do not relieve any person from any fine or penalty incurred by him for not cancelling an adhesive stamp.

Bills in a set.—When a bill of exchange is drawn in a set according to the custom of merchants, each part of the set being numbered and containing a reference to the other parts, and one of the set is duly stamped, the other or others of the set are, unless issued or in some manner negotiated apart from the stamped bill, exempt from duty. If they be not numbered, each bill requires a separate stamp. Upon proof of the loss or destruction of a duly stamped bill forming one of a set, any other bill of the set which has not been issued, or in any manner negotiated apart from the lost or destroyed bill, may, although unstamped, be admitted in evidence to prove the contents of the lost or destroyed bill.

Stamp duty on protest.—The stamp duty on the protest of a bill or promissory note may be denoted

by an adhesive stamp, which must be cancelled by the notary. Where the duty on the bill or note does not exceed one shilling, the duty on the protest is the same as on the bill or note. In any other case the duty is one shilling.

Effect of Lapse of Time on Liability of Parties on Bills of Exchange.—There is a material difference in the laws of England and Scotland on the effect of the lapse of six years on the liability of parties on bills of exchange. In England the position is regulated by the Limitation Act of 1623, commonly referred to as the Statute of Limitations, and in Scotland by an Act passed in the reign of George III. The law in both countries may be thus briefly summarised.

In England—Statute of Limitations.—No action on a bill can be maintained against any party thereto after the expiration of six years from the time when a cause of action first accrued to the then holder against such party. The rights, however, of a holder in due course who takes a bill dishonoured by non-acceptance without notice of that fact are not affected by this rule.

How Provisions of Statute may be elided.—Any circumstance which postpones or defeats the operation of the Statute of Limitations in the case of an ordinary contract postpones or defeats it in like manner in the case of a bill. No indorsement or memorandum of any payment written or made upon a bill by or on behalf of the party to whom such payment is made is sufficient to defeat the operation of the Statute. Hence to take a case out of the Statute either there must be an acknowledgment in writing of the debt from which a promise to pay is to be implied, or secondly, there must be an unconditional promise to

pay the debt, or thirdly, there must be a conditional promise to pay the debt and evidence that the condition has been performed. Again a payment to account of principal or interest defeats the Statute. As regards proceedings in Court the time is determined from the issue of a writ in the High Court or the entering of the plaint note in the County Court. An extension of time is allowed in certain circumstances. For instance, where a person sought to be charged is insane, the period of six years is reckoned from the date of the recovery of his sanity. If the debtor is out of the jurisdiction of the English Courts when the bill becomes payable the six years are reckoned from the date of his return, but if he is in England when the cause of action arises, but subsequently leaves England, his departure does not effect the running of the six years.

In Scotland—Prescription.—The sexennial prescription applies to bills of exchange, cheques, and promissory notes. It was introduced by an Act passed in the reign of George III., which provides that no bill of exchange or inland bill or promissory note shall be of force or effectual to produce any diligence or action in Scotland unless such diligence shall be raised and executed or action commenced thereon within six years from and after the terms at which the sums in the said bills or notes become exigible. The Act does not apply to bank-notes or post bills.

During the six years the bill proves itself. After the lapse of that period the burden of proving the debt contained in the bill, and that it is still unpaid, is laid upon the holder of the bill, and proof is limited to the writ or oath of his adversary. Nothing can avoid or elide this statutory prescription except what

the statute provides, viz., action or diligence commenced or done upon the bill or note within the six years, and nothing can be done by the debtor or creditor after the six years have expired which will give the bill force or effect as a ground of action. The bill, in short, is put an end to as a document of debt, and the resting owing of the debt must be proved otherwise than by the mere production of the bill.

Limitation of the prescription.—The Act provides that “the years of the minority of creditors in such bills or notes shall not be computed in the said six years.” This exception is available to any indorsee to whom the bill is indorsed within the sexennium, but it is only the minority of an actual creditor which can be pleaded.

Time from which six years begin to run.—The six years are reckoned on bills payable at a future date from the last day of grace, on bills payable on demand at sight or on presentation from the date of the bill, and on bills payable so many months after notice, from the lapse of the months specified after a demand for payment has been made.

CHAPTER XIII

CHEQUES

DEFINITION.—The statutory definition of a cheque is “a bill of exchange drawn on a banker payable on demand.”¹ } Like a bill, a cheque may be expressed in any language, English or foreign. Except as otherwise provided in part iii. of the Bills of Exchange Act, 1882, which exceptions are noted *infra*, the provisions of the Act applicable to a bill of exchange payable on demand apply to a cheque. Any number of persons can sign as drawers of a cheque so long as the account upon which the cheque is drawn is in their joint names. An order to pay money in the form of an ordinary cheque, with a proviso that a receipt form attached should be filled up, has been held not to be a cheque within the meaning of the Bills of Exchange Act.² A cheque includes coupons on Colonial stock certificates.³

Dividend Warrants.—The provisions of the Act apply to warrants for payment of dividends, and if such warrants are drawn in the usual form are entitled to the legal privileges of cheques.

Banker's Drafts.—Different considerations arise where the draft is drawn by one banker on another, and where the draft is drawn by a branch bank on its

¹ Act, § 73.

² *Bavins, Junr. & Sims v. London & South-Western Bank*, [1900] 1 Q. B. 270.

³ Colonial Stock Act, 1877 (40 & 41 Vict. cap. 59), § 7.

head office or another branch of the same bank. In the former case the drafts are entitled to the privileges of crossed cheques when crossed. In the latter case, however, the drafts are not cheques, for they are not addressed "by one person to another." Such drafts are in practice frequently crossed. It is thought that the bank upon which such a draft is drawn would be bound to pay it over the counter to anyone who presented it indorsed, irrespective of a crossing, and that the banker would be freed from liability by so paying the draft under section 19 of the Stamp Act, 1853. (For which, see p. 130.)

Difference between Cheque and Bill.—Cheques differ from bills of exchange in the following particulars: (1) they are not intended to be, and are not in fact, accepted by the banker on whom they are drawn; (2) they are granted not as a continuing security, but for more or less immediate payment, and consequently may sooner become "stale" or overdue; (3) the drawer is not discharged by undue delay in presentment, unless he has thereby been prejudiced; (4) the banker who is the drawee or acceptor is not liable for having paid on a forged or unauthorised indorsement; and (5) they may be countermanded after issue.

Post-dated Cheques.—A banker is not entitled to cash a cheque prior to the date on which it purports to be drawn, but it would appear that a post-dated cheque may validly be negotiated for value prior to the date on which it bears to be drawn.¹ As illustrating the danger a banker, upon whom a cheque is drawn, runs in paying the cheque before its date, a recent decision may be referred to. A merchant in North Berwick bought a horse on the 14th April 1909,

¹ *Royal Bank of Scotland v. Tottenham*, [1894] L. R. 2 Q. B. 715.

and received a written warranty as to the condition of the horse. The horse was delivered on the 15th, but in order that the horse might be tested the merchant dated his cheque the 16th. On the evening of the 15th the horse was rejected as being disconform to warranty, and before the start of business on the 16th the bank agent was notified by his customer, the drawer of the cheque, that payment was not to be made. On the 15th, however, the bank paid the cheque to the person in whose favour it was drawn, and the sum was charged to the drawer's account, who declined to agree to the debit, and sought to have the bank ordained to restore the sum to his account. In this he was successful, on the grounds that the drawer had timeously countermanded payment.¹ An important decision was in May 1920 given in England by the King's Bench Division on the law relating to post-dated cheques in an action at the instance of Lloyd's Bank against a Mr. Dolphin. The material facts of the case were, Mr. Dolphin gave to a Captain Barker on 15th July 1919 a post-dated cheque for £1500, bearing date July 22, which was immediately paid into the bank by the payee and credited to his account, and against which he at once drew out £1300. In the meantime the drawer of the cheque countermanded payment of the cheque, and the amount not having been paid by the bank on which the cheque was drawn Lloyd's Bank sued for the sum. The judge in deciding for the plaintiffs held that, as the bank had allowed Captain Barker to draw against the cheque, they were thereby holders for value of the cheque and not merely agents for collection as they would have

¹ The case is fully reported in the *Haddingtonshire Courier* of 4th June 1909.

been if their customer's account was in credit. The bank was therefore entitled to recover against the drawer of the cheque. The case may be appealed.

A cheque must be signed by the drawer. The signature is usually but not necessarily adhibited in the right-hand lower corner of the cheque. It may, however, be written in any part of the cheque. The signature must be that of the person in whose name the account is kept, or of someone authorised by him to sign that name, or the signature of a person who has authority as agreed between the banker and his customer to operate on the account. Signature does not necessarily mean subscription. It is sufficient if adequate means of the customer's identification be afforded to the banker ; and a cheque which is holograph of the drawer, and which contains his name, is sufficient authority to the banker to honour the cheque. Thus a cheque holograph of the drawer in in such terms as "I, John Smith, desire you to pay," or "Mr. John Smith desires the Bank of to pay," is good. A cheque is valid if initialed by the drawer, if initialing be his usual mode of signature. A cheque may also be signed on behalf of any person, whether drawer or indorser, who is unable to do so, by a notary public or justice of the peace. Although common in practice, and invariably accepted, a cheque drawn in Scotland for a less sum than twenty shillings is "absolutely void and of no effect, any law, statute, usage, or custom to the contrary thereof in any wise notwithstanding." Any person who issues or negotiates such a cheque is liable to "forfeit and pay for such offence any sum not exceeding twenty pounds nor less than five pounds, at the discretion of the justice of the peace who shall hear and determine such

offence"—(The Bank-notes (Scotland) Act, 1845). This enactment was an extension to Scotland of the provisions of the English Act of 48 Geo. III. c. 88 ; and while the English Act has been repealed by the Bills of Exchange Act, 1882, the Scots Act has been omitted from the repealing schedule. The law, therefore, as regards Scotland, as distinguished from the law in England, must still be taken to be as above stated. So far as can be found, there is no recorded case in which the penalty has been imposed. A cheque must be stamped with a stamp-duty of twopence, which, if it be drawn in the United Kingdom, may be denoted by an adhesive stamp. A cheque drawn on banks in the Channel Islands or Isle of Man are not liable to stamp duty in these islands, but when negotiated in the United Kingdom there must be affixed to them and cancelled a twopence stamp. The Stamp Act only permits the stamp to be affixed and cancelled by the drawer or the banker or other person to whom the cheque is presented for payment. If the stamp is cancelled by any other one, the cheque is not duly stamped.¹ Although usually written on paper provided by banks, cheques are valid although written on any kind of paper. In one case a person wrote a cheque on an ordinary sheet of paper, adding the words "to be retained," and promising to exchange the paper for a cheque on a banker's form. This he subsequently declined to do. The Court held that the writing was sufficient as a cheque, as it was an unconditional order to pay.

Cheque as obligation for overdraft.—Where customers of a bank desire a specific loan for an indefinite period, instead of discounting their bill or promissory

¹ *Hobbs v. Cathie*, 1890, 6 T. L. R. 292.

note and renewing it from time to time, the advance may be agreed to against their cheque. The liability of the drawers on such a cheque recently came before the Court. In the case referred to¹ three persons drew a cheque on a bank in favour of ". . . or order." None of the drawers had any funds at their credit with the bank at the time. The bank cashed the cheque, payment being made to one of the drawers, and opened an account in name of the three drawers to the debit of which they placed the amount of the cheque. Subsequently a question arose as to whether or not the three persons were jointly and severally liable for the amount advanced or each only for one-third. The Court held that the drawers were liable to the bank jointly and severally for the full amount.

Presentment of Cheque for Payment.—Subject to the provisions of the Act, where a cheque is not presented for payment within a reasonable time of its issue, and the drawer or the person on whose account it is drawn had the right at the time of such presentment, as between him and the banker, to have the cheque paid, and suffers actual damage through the delay, he is discharged to the extent of such damage, that is to say, to the extent to which such drawer or person is a creditor of such banker to a larger amount than he would have been had such cheque been paid.² In determining what is a reasonable time, regard is had to the nature of the instrument, the usages of trade, and the facts of the particular case. The holder of such a cheque, as to which such drawer or person is discharged, is a creditor, in lieu of such drawer or person, of such

¹ *Laurence Henderson, Sons & Co., Ltd. v. Wallace & Pennell*, 1902, 5 F. 166.

² Act, § 74.

banker to the extent of such discharge, and entitled to recover the amount from him. Subject, however, to these restrictions, a cheque is in both England and Scotland a good document of debt for six years after its date. An indorser, however, is in a different position. He is discharged if the cheque be not presented within a reasonable time after his indorsement. A cheque must be presented to the banker upon whom it is drawn within bank hours on a business day, and at his place of business, by the holder or some person authorised by him to receive payment on his behalf. If a banker pay a cheque outwith business hours, he does so at his own risk, for by so acting he prevents the drawer countermanding payment before the bank reopens on the next business day. A cheque payable at a branch bank must be presented there, and not at the head office. Presentation may be made through the post-office. The sender is not responsible for delay on the part of the post-office authorities, and presentation will be held to have been duly made if the letter containing the cheque has been properly delivered to the post-office for transmission.

With regard to the time within which a cheque must be presented to the banker upon whom it is drawn, somewhat different considerations arise, according to the relation of the parties between whom the question is raised.

(1) *As between drawer and payee.*—A cheque is not satisfaction of the payment of a debt until it is honoured; and unless damage have resulted from the delay and the cheque is dishonoured, the drawer is still liable.

(2) *As between drawer and transferee.*—The transferee of a cheque is, as regards his right to recover

from the drawer in the event of the cheque being dishonoured, in the same position as the payee, and he is therefore bound to present the cheque within the same time available to the payee.

(3) *As between payee and transferee.*—When a cheque is transferred by indorsation, the transferee has a right of action against both the drawer and indorser, the indorser standing in the same relation to his indorsee as the drawer does to the payee. To render an indorser liable, presentation of the cheque must be made by the indorsee within a reasonable time. Reasonable time in this case has been decided to mean not later than the day after receipt of the cheque by the indorsee.

(4) *As between a banker and his customer.*—When a banker is entrusted with a cheque for presentation and collection by the payee or holder, he has, as between himself and his customer, the day after receipt of the cheque, to present it, unless circumstances exist from which a contract or duty on the part of the banker to present earlier or to defer presentment to a later period can be inferred. If the banker employ an agent to present the cheque on his behalf, he will have the day after receipt to post it to such agent, and the agent similarly will have the day after his receipt of the cheque to present it to the drawee.

Revocation of banker's authority to pay Cheque.—The duty and authority of a banker to pay a cheque drawn on him by his customer are determined by (1) countermand of payment, and (2) notice of the customer's death.¹ A cheque may be countermanded verbally, but for obvious reasons the drawer should

¹ Act, § 75; *Kirkwood & Son v. Clydesdale Bank*, 1908, S. C. 20.

be asked to put his request in writing. It may also be countermanded by telegram.¹ In an English case which determined this point, a customer after bank hours telegraphed to his banker to stop payment of a cheque which he had issued. Through the mistake of a clerk the telegram was not brought to the notice of the manager of the bank for two days after receipt, by which time the cheque had been presented. It was held that the telegram in the circumstances of this case was not an effective stoppage, and that the drawer's account was properly debited with the amount. Any partner of a firm may countermand payment of a cheque issued in the firm's name, and that although he may not be the partner who signed the cheque. While a banker's duty is determined by countermand of payment, a cheque granted for valuable considerations cannot, in a question with a holder for value, be countermanded by the drawer, unless it has been drawn on condition that it will only be used on the occurrence of a certain event which does not happen, or in payment of goods which have not been delivered. It is competent to prove by parole that a cheque was granted subject to certain conditions, and a holder for value who takes such a cheque *with notice of the conditions* is not entitled to recover on the cheque unless the conditions are implemented. While this is so, the banker cannot pay the cheque, as he must carry out his customer's instructions. The banker's subsequent duty is different in England and Scotland. In England the banker would return the cheque and pay any subsequent cheque that might be presented. In Scotland,

¹ *Curtice v. London City and Midland Bank*, 1908, 1 K. B. 293, C. A.

if there be funds in the hands of the banker sufficient to meet the cheque at the time of presentation, he must hold the presentation as an intimated assignation, and transfer the amount of the cheque to a separate account bearing reference to the cheque until the question between the parties is determined. Where the drawer of a cheque countermands payment, the holder may raise an action of multiple-poining in the banker's name, and so determine the rights of parties. But in both England and Scotland no direct action is competent at the instance of an onerous payee and holder of a cheque against the bank on which it is drawn, and which, having funds of the drawer sufficient to honour it, has refused to do so on presentment, on account of the drawer having countermanded payment.¹ Where the payee has paid it into his bankers to reduce the amount of a balance standing against him, the bankers become holders for value, and are entitled to sue the drawer for the amount if he have countermanded payment.² So, it has been held that if the payee have paid a cheque, payment of which has been countermanded, into his bankers, with the intention that it should be placed to his credit, it is immaterial whether a balance be standing against him or not, and the bank, as a holder for value, can sue the drawer on the cheque.³

The death of the drawer does not *per se* operate as a revocation of the banker's authority, and payment of a cheque by a banker subsequent to his customer's death, but before notice of the fact has reached him, will be good. Where one partner of a firm consisting

¹ *Waterston v. City of Glasgow Bank*, 1874, 1 R. 470.

² *Maclean v. Clydesdale Bank*, 1883, 11 R. (H. L.) 1.

³ *Ex parte Richdale, In re Palmer*, L. R. 19 Ch. D. 409.

of two or more partners dies, the death of the one partner does not prevent the surviving partner or partners operating on the firm's account.

Crossed Cheques.—When a cheque is crossed, a direction is thereby conveyed to the banker upon whom it is drawn that payment can only be made in a particular way, and to the holder of the cheque that he can only receive payment in that way. Cheques may be crossed either generally or specially.

General Crossing.—When a cheque bears across its face an addition of the words “and company” or any abbreviation thereof between two parallel transverse lines, either with or without the words “not negotiable,” or two parallel transverse lines simply either with or without the words “not negotiable,” that addition constitutes a crossing, and the cheque is crossed generally.¹ According to a practice introduced by the London banks, a cheque may be crossed by means of a perforating machine. The effect of a general crossing is that the banker on whom the cheque is drawn is only protected if payment is made through a banker. Should he disregard the crossing and make payment in any other way, and loss thereby ensue, he is liable to the true owner for such loss. In other words, a banker who pays an *uncrossed* cheque payable to bearer to a thief or a finder is protected, as there is no obligation on him to see that the person who presents the cheque for payment is the person who is entitled to it; and a banker paying an uncrossed cheque to order is protected if he pay on an indorsement, which purports to be signed by or with the authority of the person to whom it is payable, even if the signature turn out to have been forged or

¹ Act, § 76.

adhibited without authority. But a banker who pays a cheque to a thief or finder, or upon an unauthorised or forged signature, in disregard of a crossing, whether special or general, is in a different position, in that he is liable to the true owner, whether the drawer or a subsequent transferee, if that true owner can prove that he has suffered loss by the cheque having been so paid.¹ There is, however, nothing to prevent a banker cashing a crossed cheque over the counter if he is satisfied that the presenter is the person to whom it is payable. Crossed cheques should only be paid in cash to the customer himself. Hence crossed cheques in favour of Joint Stock Companies should not be paid over the counter. A banker who receives a crossed cheque through the clearing-house which bears no banker's stamp is justified in paying it, as the payment in such a case must necessarily have been made to a banker, and therefore in obedience to the drawer's direction implied in the crossing.

Special crossing.—Where a cheque bears across its face an addition of the name of a banker, either with or without the words “not negotiable,” that addition constitutes a crossing, and the cheque is crossed specially and to that banker. A cheque which is crossed generally with the addition of the name of a town is not recognised either by law or custom as part of a crossing. A cheque crossed “Bank” is not crossed specially, but the name of a banker written across the face of a cheque without the addition of the two parallel transverse lines is sufficient to constitute a special crossing. The consequences to the banker of disobedience to the directions contained in a special

¹ *Bobbett v. Pinkett*, L. R. 1 Ex. D. 368; *Smith v. Union Bank of London*, L. R. 1 Q. B. D. 31.

crossing are the same as those which follow disobedience to the directions given by a general crossing. A banker on whom a cheque is drawn which is crossed specially is probably justified in paying such a cheque if he receive it through the clearing-house without the stamp of the presenting bank, since he would be justified in assuming that the cheque was presented by the banker to whom it was crossed.

Who may cross Cheques.—A cheque may be crossed generally or specially by the drawer. Where a cheque is uncrossed the holder may cross it generally or specially. Where a cheque is crossed generally, the holder may cross it specially. Where a cheque is crossed generally or specially, the holder may add the words “not negotiable.” Where a cheque is crossed specially, the banker to whom it is crossed may again cross it specially to another banker for collection. Where an uncrossed cheque or a cheque crossed generally is sent to a banker for collection, he may cross it specially to himself.¹

Crossing a material part of Cheque.—A crossing is a material part of a cheque, and it is therefore not lawful for any person to obliterate or, except as authorised by the Act, to add to or alter the crossing.² The additions authorised by the Act are those above stated in the paragraph headed “Who may cross cheques.” Where a cheque is materially altered without the assent of all parties liable on it the cheque is avoided, except as against a party who has himself made, authorised, or assented to the alteration, and subsequent indorsers. (As to material alterations, see p. 82.)

Duties of Bankers as to crossed Cheques.—When a cheque is crossed specially to more than one banker,

¹ Act, § 77.

² Act, § 78.

except when crossed to an agent for collection being a banker, the banker on whom it is drawn must refuse payment thereof. Where a banker on whom a cheque is drawn which is so crossed nevertheless pays the same, he is liable to the true owner of the cheque for any loss he may sustain owing to the cheque having been so paid.¹

Where crossing not apparent.—Where a cheque is presented for payment which does not at the time of presentment appear to be crossed, or to have had a crossing which has been obliterated, or to have been added to or altered otherwise than as authorised by the Act, the banker paying the cheque in good faith and without negligence shall not be responsible or incur any liability, nor shall the payment be questioned by reason of the cheque having been crossed, or after crossing having been obliterated, or having been added to or altered otherwise than as authorised by the Act, and of payment having been made otherwise than to a banker, or to the banker to whom the cheque is or was crossed, or to his agent for collection being a banker, as the case may be.

Protection to banker and drawer where Cheque is crossed.—Where the banker on whom a cheque is drawn in good faith and without negligence pays it if crossed generally to a banker, and if crossed specially to the banker to whom it is crossed or his agent for collection, being a banker, the banker paying the cheque, and if the cheque has come into the hands of the payee, the drawer, shall respectively be entitled to the same rights and be placed in the same position as if payment of the cheque had been made to the true owner thereof.² The remedy of the payee in such

¹ Act, § 79.

² Act, § 80.

circumstances is against the person on whose behalf the amount of the cheque has been collected.

Effect of addition of words "not negotiable."—In addition to the crossing on a cheque, the drawer or holder of it may add the words "not negotiable." Such words must, however, not be taken to imply any limitation of the negotiability of the cheque, but the person who takes a crossed cheque which bears on it the words "not negotiable" has not and cannot give a better title to the cheque than that of the person from whom he took it.¹ No one, therefore, can be a holder in due course of such a cheque. All persons who take a cheque marked "not negotiable" and treat it as a negotiable security must recognise the fact that if they do so they take the risk of the person for whom they negotiate it having no title to it. The object of the addition is to give protection to the true owner of the cheque by preserving his right against any subsequent holder, and the addition of the words "not negotiable" imposes on the banker no liability other than that attaching to crossed cheques generally.

Effect of addition of words "Account Payee," &c.—The words "Account Payee" added to a crossing have no statutory recognition, but a collecting banker would probably be held liable in damages if in disregard of these words he credited another account with the amount and loss to the true owner ensued.

Protection to collecting banker.—The mere receiving payment of a cheque on behalf of a customer is not a ground of liability; and where a banker in good faith and without negligence receives payment for a customer of a cheque crossed generally or specially to himself, and the customer has no title or a defective title

¹ Act, § 81.

thereto, the banker incurs no liability to the true owner by reason only of having received such payment.¹ This section some time ago engaged the attention of our Courts, and, as a result of the decision,² the law was thus fixed that if bankers did more than act as mere agents for collection, or, as one of the Judges put it, act otherwise than as "a mere conduit pipe for conveying the cheque to the bank on which it is drawn, and receiving the money from that bank for their customer," they were not within the protection of the section. Thus, if a banker at once credited a customer with the value of a cheque drawn upon another bank and allowed him to draw against the balance thus increased before the cheque was cleared, the banker became a holder for value, and collected the cheque not on behalf of his customer but of himself, and was therefore not within the protection afforded by the section. But the banker would have been within the protection of the statute if, without crediting the account of the customer with the value of the cheque before collection, he allowed him to overdraw his account, in view of the anticipated credit. The distinction between the two cases was so very subtle and difficult to understand that the matter was taken up by the London bankers. After several ineffectual attempts they at last got an Act of Parliament passed overturning the decision referred to and placing the law on equitable lines. That Act is known as the Bills of Exchange (Crossed Cheques) Act, 1906,³ and provides that "a banker receives payment of a crossed cheque for a customer within the meaning of

¹ Act, § 82.

² *Capital and Counties Bank v. Gordon*, [1903] A. C. 240.

³ 6 Edward VII. c. 17.

section 82 of the Bills of Exchange Act, 1882, notwithstanding he credits his customer's account with the amount of the cheque before receiving payment thereof." As the law now stands, a banker is entitled to the protection of the Statute, whether he credits his customer's account with the value of the cheque or not before it is cleared. But a banker who collects on behalf of a stranger has no such immunity, as in such a case he is bound to make full inquiries as to the title of the person for whom he acts. Whether a person is a customer of a bank within the meaning of section 82 is a question of fact. In one case¹ a rate-collector had been in the habit of receiving cheques for rates and cashing them at a country branch of the London and County Banking Co. where he was known, but had no account. By falsely pretending that a rate was due, he obtained from a company a cheque drawn to his order on a London bank, crossed generally, and marked "not negotiable," which he presented at the said branch bank. The cheque was cashed, and a portion of the proceeds applied according to the collector's request. The balance was paid to him, and he appropriated it. In an action by the company against the bank to recover the cheque or its proceeds, it was found as fact that the bank received payment in good faith, but that in the circumstances the bank were liable, as everyone who takes a cheque "not negotiable" takes it at his own risk, and his title to the money is as defective as his title to the cheque itself. The immunity provided to bankers by section 82 was held inapplicable to the case in question. There is no definition of a customer

¹ *Great Western Railway Co. v. London and County Bank*, [1901] A. C. 414.

in the Act, but to constitute such a relationship there must be some sort of account, either a deposit or a current account, or some similar relation. Further, to entitle bankers to the benefit of the Statute, they must act in good faith and without negligence. In one case a cheque was drawn payable to a limited company and crossed generally. The secretary of the company indorsed the cheque in name of his company, subscribing his own name as secretary. He then paid it to the credit of his own personal account with his bankers and drew out the amount as he required it. In an action by the company against the collecting bank it was decided that although the bank had acted in good faith they were liable to the company in the amount of the cheque. The ground of the decision was, that it was apparent on the face of the transaction that the secretary was using for himself a valuable document which bore evidence of having been granted for the benefit of his employers, that the whole course of ordinary business was opposed to the idea that the secretary of a company was likely to have been paid money due to him as salary or otherwise by the authorisation of the indorsement by himself to himself of a cheque payable to the order of the company, and that in accepting such a cheque so indorsed for his private account the bank were guilty of negligence and had thus lost the protection of the Statute.¹

Valuable consideration.—(See p. 36.)

*Holder of Cheque deemed to be onerous holder.*²—
(See p. 39.)

¹ *Hannan's Lake View Central, Ltd. v. Armstrong & Co.*,
16 T. L. R. 236.

² *Semple v. Kyle*, 1902, 4 F. 421.

Indorsation.—A cheque being a bill of exchange payable on demand, may, like any other bill, be indorsed so as to entitle the indorsee or any subsequent holder to sue the indorser thereon, and the ordinary rules applicable to the indorsation of bills of exchange apply. But the ordinary indorsation of a payee to a banker is not such as to subject him to any liability. Such an indorsation is really of the nature of an acknowledgment of receipt of payment, and a guarantee to the drawer that the banker has paid the cheque—on the principle that when a document of debt is in the debtor's possession, payment of the debt is presumed—and that he is therefore entitled to debit his account with the amount. An indorsation is usually, though not necessarily, written on the back of the cheque.

A cheque drawn in favour of "*A. B.* or bearer" is negotiated by delivery without indorsation, and may be passed from hand to hand like an ordinary bank-note. When presented to a banker for payment it requires no indorsation. A cheque drawn payable to bearer, so long as it purports to be so payable, cannot be restrictively indorsed by the payee or any subsequent holder so as to be payable to the order of the indorser, although the payee of such a cheque is entitled to substitute the word "order" for the word "bearer" in the body of the cheque, and thus to change the cheque from one payable to bearer to one payable to order. A cheque in favour of a person "or order" is negotiable by the indorsation of that person and delivery to the indorsee. The indorsation may be (1) general, *i.e.* blank indorsed, and a cheque so indorsed becomes payable to bearer; (2) special, *i.e.* the indorsement specifies the person to whom or to

whose order the cheque is to be payable; and (3) restrictive, *i.e.* when the indorsement prohibits the further negotiation of the cheque, or which expresses that it is a mere authority to deal with the cheque as then directed, and not as a transfer of the ownership, as, for example, if it be indorsed "Pay *D.* only," or "Pay *D.* for the account of *X.*"

A banker is bound to pay a cheque which purports to be indorsed by the person to whom it is drawn payable; and so long as the indorsement is regular, the banker is under no obligation to ascertain that it is *bonâ fide*. In the case of a crossed cheque, this freedom from liability depends on his obeying the direction conveyed by the crossing (see "Crossed Cheques"). A banker who suspects on reasonable grounds an indorsation to be forged is, however, justified in taking time to inquire into its genuineness.

Where, in a cheque payable to order, the payee or indorsee is wrongly designated or his name misspelt, he may indorse the cheque as therein described, adding, if he think fit, his proper signature. Thus a cheque drawn in favour of "John Smith" is not properly indorsed "John Smyth," but a variation in the Christian name of a payee which is obviously one of spelling, as where "Gorge" is written for "George," will not justify the banker in refusing to honour the cheque, though a cheque payable to "Ann Smith" is not validly indorsed "Anne Smith," since Ann and Anne are not obviously different ways of spelling the same name. A cheque payable to "Mrs. John Smith" should not be indorsed "Mrs. John Smith," but "Mary Smith, wife of John Smith." A cheque payable to "*A. B. senior*" is validly indorsed "*A. B.,*" but a cheque to "*A. B.*

junior” is not validly indorsed “*A. B.*,” since the word *junior* is necessary to *A. B.*’s identification.

A cheque payable to “John Jones, trustee (or executor, etc.), or order,” must be indorsed “John Jones, trustee” (or executor, etc., as the case may be). A cheque payable to “Messrs. Smith” is validly indorsed “A. & B. Smith,” but not “Smith & Coy.,” for in the former case the banker is entitled to assume that A. & B. Smith are the Messrs. Smith intended by the drawer, while in the latter case no such presumption can exist. A cheque payable to “Messrs. J. Smith & Co. or order” is not validly indorsed “Smith & Co.,” and *vice versa*, as a banker would not be justified in assuming that Messrs. Smith & Co. are Messrs. J. Smith & Co. So a cheque payable to “Messrs. Smith Brothers” is not validly indorsed by the signatures of the Messrs. Smith respectively, who constitute the partnership, but should be indorsed “Smith Brothers.” A cheque payable to “John Smith” is validly indorsed “J. Smith,” as the banker is justified in assuming that the “J. Smith” who signs is the “John Smith” referred to. A cheque payable to a person is on his decease validly indorsed by his executor if it bear to be signed authoritatively by such executor. A cheque payable to the order of “Mr. J. & Mrs. M. Smith” is not validly indorsed “J. & M. Smith,” but should bear the indorsation of both of the payees, as where a cheque is payable to the order of two or more payees or indorsees who are not partners, all must indorse unless the one endorsing has authority to indorse for the others. Cheques payable to the order of a limited company, or of a company trading under a descriptive name, such as “The Edinburgh Tramway

Co.," should be indorsed "for and on behalf of" or "*per procuration*" of the company by one of the officials or partners of the company, with the addition of his official designation as "manager, secretary," etc. A cheque payable to the order of a company, or the manager or secretary of a company, trading under a descriptive name, is not validly indorsed by a third person signing *per procuration* of the manager or an official of such company, as such person has no power to delegate his authority. But a cheque signed *per procuration* or for and on behalf of such a company by a person who signs for the manager or other official of the company is valid, as it purports to be signed by the authority of the company. So a cheque in favour of the "S.S. Edinburgh or order" should be indorsed by some one acting "for and on behalf of" the Steamship. A cheque payable to "John Smith or order" is not validly indorsed "For John Smith, Robert Brown, trustee," as it does not purport to be indorsed by or with the authority of the payee; but a bank, on obtaining evidence of the appointment of Robert Brown as trustee on the sequestrated estates of John Smith, would be in safety to pay the cheque on such an indorsement. An indorsement by means of an impressed stamp purporting to be a facsimile of the payee's signature would probably justify a banker in cashing a cheque, on the ground that it purports to be the signature of the payee adhibited, if not actually by him, at least by his authority.

Where a person is under obligation to indorse a cheque in a representative capacity, he may indorse it in such terms as to negative personal liability by the addition of words indicating that he signs merely as an agent, or filling a representative capacity.

Dishonouring Cheque.—A banker is bound to honour his customer's cheque if it be presented to him within banking hours and he have funds sufficient to meet it. If he fail or refuse to do so, he will be liable in damages to his customer, though not to the payee, with whom he has no privity of contract, should his customer suffer loss or damage through such failure or refusal. Where a customer is neither bankrupt nor *vergens ad inopiam*, a banker cannot refuse to honour his cheque where there are funds sufficient to meet it, and retain the money as security for a bill which has not yet matured, nor in security of a claim against the bankrupt in regard to which there is nothing more than a presumption of liability.¹ But no action will lie against a banker for dishonouring cheques where his customer's assets have been exhausted by the payment of bills accepted by his customer and made payable at the banker's, as the acceptance of such bills is sufficient authority to the banker to pay the amounts due upon them.²

Payment of Cheque on forged signature of drawer.—While a banker who pays a cheque *bonâ fide* and without negligence on an indorsement which subsequently turns out to have been forged is protected (see "Forged Indorsation"), no similar protection is afforded him in the case of the forged signature of the drawer, on the ground that a banker is held to know his customer's signature. The payment of a forged cheque or order is not of itself any payment at all as between the party paying and the person whose name is forged. Mere delay on the drawer's part in giving notice of the forgery will not necessarily imply

¹ *King v. British Linen Bank*, 1899, 1 F. 928.

² *Kymer v. Laurie*, 18 L. J. Q. B. 218.

adoption nor bar him from repudiating liability, unless the holder or others have been prejudiced by his silence.¹ If the drawer lead the bank to believe in the genuineness of his signature till the bank have lost some opportunity of recovering the cheque which, had the forgery been known, it might have used, such delay will effect a sufficient alteration in the bank's position to preclude the drawer setting up the forgery.

The most important case within recent times regarding the liability of a bank for payment on the forged signature of the drawer, their customer, was decided by the House of Lords in June 1918, in an action raised by Macmillan & Arthur against the London Joint Stock Bank, Limited. The material facts of that case are as follows. On the morning of 9th February 1915 one of the plaintiff's partners, Mr. Arthur, was going out to lunch about mid-day. He had his hat on, and was leaving the office when a clerk came up to him and said he wanted £2 for petty cash, and produced a bearer cheque for signature. The clerk had repeatedly presented cheques for signature for petty cash, but usually for £3, and Mr. Arthur asked him why it was not £3 on this occasion. The clerk replied that £2 would be sufficient. Mr. Arthur thereupon signed the cheque, which was then in the following condition:—The space for words was entirely blank. In the space for figures there appeared the figures 2 0 0, but there was a vacant space before and after the figure 2. After signature the clerk wrote the words "One hundred and twenty pounds" in the space for words, and filled up the spaces on either side of the figure 2 by adding the figure 1 on the left and 0 on the right. He then pre-

¹ *M'Kenzie v. British Linen Bank*, 1881, 8 R. (H. L.) 8.

sented the cheque to the bank, got payment of the £120 and absconded. Macmillan & Arthur then sued the bank for £118. The judge who tried the case, and the Court of Appeal, decided against the bank. The Central Association of Bankers then took the case up and carried it to the House of Lords, with the result that the judgments of the Courts below were reversed, and the case decided unanimously in favour of the bank. In the course of their opinions the House of Lords reviewed the whole law on the subject, and as this case must now be considered as authoritative, the following legal principles may be deduced:—

(a) A man cannot complain of the consequences of his own fault against a person who was misled by that default without any fault of his own.

(b) The duty which a customer owes to a bank is to draw the cheques with reasonable care to prevent forgery, and if owing to neglect of this duty forgery takes place the customer is liable to the bank for the loss.

(c) If a cheque is drawn in such a way as to facilitate or almost to invite an increase in the amount by forgery, if the cheque should get into the hands of a dishonest person forgery is not a remote but a very natural consequence of negligence of this description.

(d) A customer is bound to exercise reasonable care in drawing a cheque to prevent the banker being misled. If he draws the cheque in a manner which facilitates fraud he is guilty of a breach of duty as between himself and the banker, and he will be responsible to the banker for any loss sustained by the banker as a natural and direct consequence of this breach of duty.

(e) It would be no defence to the banker if the

forgery had been that of a clerk of a customer that the latter had taken the clerk into his service without sufficient inquiry as to his character.

(*f*) A customer may be imprudent in leaving his cheque book and pass book in the hands of his clerk, who is thereby enabled to forge a cheque. But he is not liable for this reason that the direct and real cause of the loss is the intervention of an act of wickedness on the part of the clerk, which the law does not call on him to anticipate in the absence of obvious ground for suspicion.

(*g*) The position of the acceptor of a bill of exchange with reference to subsequent holders is very different from that of a customer with reference to his banker in the case of a cheque. (See Bills.)

Liability of bank in respect of forged indorsement.—Section 19 of the Stamp Act of 1853, which is not repealed, provides that “any draft or order drawn upon a banker for a sum of money payable to order on demand which shall, when presented for payment, purport to be indorsed by the person to whom the same shall be drawn payable, shall be a sufficient authority to such banker to pay the amount of such draft or order to the bearer thereof; and it shall not be incumbent on such banker to prove that such indorsement or any subsequent indorsement was made by or under the direction or authority of the person to whom said draft or order was or is made payable, either by the drawer or any indorser thereof.” Section 60 of the Bills of Exchange Act substantially repeats this provision, and enacts that it is not incumbent on a banker who pays in good faith and in the ordinary course of business a cheque drawn upon him to order on demand, to show that the indorsement of the payee

or any subsequent indorsement was made by or under the authority of the person whose indorsement it purports to be, and that the banker in such circumstances is deemed to have paid the cheque in due course although such indorsement has been forged or made without authority. In other words, a banker is justified in paying a cheque which purports to be indorsed by the person to whom it is drawn payable, or to be indorsed by or with his authority, as *per procura-tion* or by his agent, though it should subsequently turn out that the indorsation is a forgery, or has been adhibited without the payee's sanction or authority, provided that the payment have been made without negligence, in good faith, and in the ordinary course of business. Negligence is a question of fact, which will be determined according to the circumstances of each particular case. Thus a banker who honours a cheque drawn payable to *A. B.* or order and indorsed "for *A. B., C. D.,*" or "*A. B., per C. D.,*" will not be protected, as such an indorsation does not purport to be signed by *A. B.* or by his authority. The protection afforded by the statute applies only to the banker on whom the cheque is drawn, and does not extend to an indorsee, who takes the cheque with all the latent rights and disabilities of the person from whom he received it, or to a banker who undertakes to collect the proceeds on behalf of a person who is not a customer of his own. Thus in one case a cheque was drawn by *A. B.* payable to *C. D.* or his order. It was stolen from *C. D.* by his clerk, who, after forging his master's signature, presented it to a banker to whom he was a stranger for the purpose of collection. The collecting banker received the proceeds from the banker on whom the cheque was drawn, and handed them,

less commission, to the thief, who absconded. In an action by the drawer, it was held that while the banker on whom the cheque was drawn was protected on the ground that though he was bound to know the signature of his customer, the drawer, he could not be supposed to know that of the payee, and that he had paid the cheque to the order of the person to whom it purported to be payable, no such protection was afforded to the collecting banker, who took the cheque with all the disabilities attaching to the person from whom he received it, and who must be held to have received payment from the drawee, not on behalf of his principal, but of the true owner, the person who had a legal title to it prior to the forgery.¹ This section does not apply to crossed cheques.

A *bonâ fide* holder for value of a cheque payable to order subsequent to the forged or unauthorised indorsation cannot go beyond it, so as to sue a party, whether as drawer or indorser, liable on the cheque prior to such indorsation. Thus if *A.* draws a cheque on his banker payable to *B.* or his order, which is lost in transmission, and falls into the hands of dishonest persons who forge *B.*'s indorsement and pass it for value, the holder for value has no recourse against *A.* if he have stopped payment of the cheque. Nor is the holder even entitled to retain the cheque.

When funds in hands of bank insufficient to meet Cheques when presented.—Where a banker has funds belonging to a customer, but insufficient in amount to meet a cheque drawn upon the account, presentation of the cheque operates in Scotland (as explained with regard to Bills at p. 70), though not in England, as an intimated assignation on behalf of

¹ *Ogden v. Benas*, L. R. 9 C. P. 513.

the presenter. In Scotland, the practice is to return the cheque with the marking "insufficient funds," and to place the amount standing at the credit of the customer in a separate account bearing reference to the cheque. The bank, however, cannot refuse payment of the credit balance if the presenter deliver up the cheque. In England, the cheque is returned, and in the event of a subsequent cheque being presented, sufficient to draw out the amount standing at the credit of the drawer or for a less sum, such cheque is honoured. Where several cheques are simultaneously presented or come by the same post, or through the clearing-house at the same time, and there are not sufficient funds in the hands of the banker to pay all the cheques, the amount standing at the credit of the customer cannot be used to pay some of the cheques, but should be transferred to a separate account, specially marked against all the cheques presented, and the cheques returned marked "insufficient funds." As regards payment of the money so transferred to the holders of the cheques, this should not be done unless on delivery of all the cheques, and under a satisfactory arrangement among all the parties interested. Failing this, proceedings should be instituted, and the Court allowed to determine to whom the money should be paid.

Stale or overdue Cheques.—A cheque is deemed to be stale or overdue when it appears on the face of it to have been in circulation for an unreasonable length of time. What is an unreasonable length of time is a question of fact, and varies according to circumstances. Thus "it cannot be laid down that as a matter of law a party taking a cheque after any fixed time from date does so at his peril, and that the mere fact of the banker having cashed the cheque

five days after it bore date, for a person who had not given value for it, did not entitle the drawer to recover from the banker.”¹ A cheque which has become stale or overdue can only be negotiated subject to any defect of title affecting it, and no person who takes it can acquire or give a better title than that which the person from whom he took it had. As a cheque does not prescribe for six years after its date, the drawer is liable for the amount thereof any time within that period. The same result follows as regards bills under the Statute of Limitations (see p. 79).

Marking Cheques.—Bankers are occasionally asked to mark a cheque to the effect that the drawer has funds at his credit sufficient to meet it and that the cheque will be subsequently paid on presentation. Such markings are to be discouraged. It has not yet been decided what in the United Kingdom is the precise legal effect of such a marking, for there is no recorded case where the holder of such a cheque was refused payment and thereafter proceeded against a bank. The point has, however, been before the Privy Council on Appeals from the Colonies, when the validity of such markings was recognised.² It is thought that a banker in the United Kingdom would be bound to honour a cheque so marked, on the ground that the marking was equivalent to a guarantee that the cheque would be paid on due presentation.

Where a cheque which appears to have been in circulation for an unreasonable length of time is presented

¹ *Per* Lord Tenterden in *Rothschild v. Corney*, 9 B. & C. 388.

² *Gaden v. Newfoundland Savings Bank*, [1899] A. C. 281; *Imperial Bank of Canada v. Bank of Hamilton*, [1903] A. C. 49.

to a banker for payment, he is entitled to time to consult the drawer before paying it.

Property in Cheques.—A cheque taken in payment remains the property of the payee only so long as it remains unpaid. When paid, the banker is entitled to keep it as a voucher till his account with his customer is settled, or until the customer's account is docqueted. After that, the drawer is entitled to it as a voucher between him and the payee.

Protest and summary diligence.—The point has never been expressly decided, but the opinion is generally entertained that summary diligence in Scotland is incompetent on a cheque.¹

¹ *M'Lean v. Clydesdale Bank, Ltd.*, 1883, 11 R. (H. L.), at p. 5.

CHAPTER XIV

PROMISSORY NOTES

FORM.—The following is the usual form of a Promissory Note :—

(Place and Date.)

£50.

On demand [or three months (or otherwise as the case may be) after date] I promise to pay to *A. B.* (designation) or order the sum of fifty pounds (with interest at per cent. from the date hereof till payment), value received.
C. D.

As with Bills of Exchange, there is no statutory form for such documents ; and so long as a writing contains the essentials of a promissory note, it is immaterial how it is framed or expressed.

Although distinct in form, promissory notes are in their essentials bills of exchange, and may be described as bills in which the drawer and acceptor are the same person.

The Bills of Exchange Act, 1882, part iv. §§ 83 to 89 inclusive, contains the statutory provisions with regard to promissory notes, but in construing these sections what has already been stated with regard to bills and cheques will be kept in view.

Statutory definition.—“A promissory note is an unconditional promise in writing (p. 4) made by one person to another, engaging to pay on demand, or at

a fixed or determinable future time, a sum certain in money (p. 5) to or to the order of a specified person or to bearer.”¹ The word “promise” is not necessary, nor need a promise be actually expressed if it be unequivocally implied.

An instrument in the form of a note payable to the maker’s order is not a promissory note within the meaning of the Act unless and until it is endorsed by the maker.

A note is not invalid by reason only that it contains also a pledge of collateral security, with authority to sell or dispose thereof, which has been held to import that if a note contains anything more, it would not be valid as a promissory note, although it might still be valid as an agreement.²

A note which is or on the face of it purports to be both made and payable within the British Isles (p. 6) is an inland note. Any other note is a foreign note.

A document is not invalid as a promissory note by reason only that it does not contain the name of the person to whom the amount is to be paid, or the words “to bearer,” if in fact the document contain a promise to pay, and it is handed by one person to another.³ The mere fact that a document contains a statement of facts not necessary to its validity as a promissory note does not make it any the less a promissory note. But if it contain more words of obligation than those required by the Act it will not be valid as a promissory note, though it may still be valid as an agreement. As illustrative of what have been decided to be promissory notes and what have not, the

¹ Act, § 83.

² *Kirkwood v. Smith*, 1896, L. R. 1 Q. B. 582.

³ *Daun v. Sherwood*, 1895, 11 T. L. R. 211.

following examples may be given. "I do acknowledge myself to be indebted to D. A. in £ , to be paid on demand, for value received." "John Mason, 14th February 1836, borrowed of Mary Ann Mason, his sister, the sum of £14 in cash as per loan, in promise of payment of which I am truly thankful for, and shall never be forgotten by me John Mason.—Your affectionate brother, John Mason. £14." The above were decided to be promissory notes. "I have received the sum of £20 which I borrowed of you, and I have to be accountable for the said sum with interest." "In consideration of your advancing to M. and H. £250 on their joint and several notes, I undertake to pay £250 on demand should their note not be met at maturity," were decided not to be promissory notes.

Delivery necessary.—A promissory note is inchoate and incomplete until delivery thereof to the payee or bearer.¹ (As to what constitutes delivery, see p. 23.)

Joint and several Notes.²—A promissory note may be made by two or more makers, and they may be liable thereon jointly, or jointly and severally, according to its tenor. A note which runs "I promise to pay," and is signed by two or more persons, is deemed to be the joint and several obligation of all the persons who sign it, any one of whom, in a question with the creditor, may be called upon to pay the full amount for which the note is granted, though entitled to relief *pro rata* from his fellow-obligants. There is, however, a difference between the laws of Scotland and England where the note runs "We promise to pay," and is signed by two or more persons. In

¹ Act, § 84 ; see also *Martini & Co. v. Steel & Craig*, 1878, 6 R. 342.

² Act, § 85.

Scotland, the note is the joint and several obligation of the persons who sign, any one of whom can be called upon by the creditor for payment. Whereas in England, in like circumstances, the note is only the joint note of the subscribers.

Presentment for payment.¹—Though in general not necessary in order to charge the maker, who is always liable in terms of his obligation for his signature without notice, presentment must be duly made to the maker in order to render an indorser liable. Where a note payable on demand has been indorsed it must be presented for payment within a reasonable time of the indorsement, otherwise the indorser is discharged. In determining what is a reasonable time, regard is had to the nature of the instrument, the usage of trade, and the facts of the particular case. In one case where a promissory note, dated the 16th of February 1864, and indorsed, the payment of which was not contemplated by the makers at any immediate or specific date, though the note was made payable on demand, was not presented to the payee for payment until the 14th of December in the same year, it was held that, as it appeared from the evidence that the note was meant to be, to a greater or less extent, a continuing security, the delay in presentation was, in the circumstances of the case, not unreasonable, and the holders of the note were entitled to recover thereon.²

When overdue.—Where a note payable on demand is negotiated, it is not deemed to be overdue for the purpose of affecting the holder with defects of title of

¹ Act, § 86.

² *Chartered Mercantile Bank of India v. Dickson*, 1871, L. R. 3 P. C. 574.

which he had no notice, by reason that it appears that a reasonable time for presenting it for payment has elapsed since its issue. So far as defects of title are concerned, the holder of a note, presentation of which has been unreasonably delayed, is in the same position as a holder of a bill in due course.

*Where made payable.*¹—Where a promissory note is in the body of it made payable at a particular place, it must be presented for payment at that place in order to render the maker liable, but in any other case presentment is not necessary to render the maker, though it is to render the indorser, liable. It has been decided that presentment of a promissory note payable at a particular place on the day when payment is due is not necessary in order to render the maker liable, and that presentment on a subsequent day is sufficient.² When a note is in the body of it made payable at a particular place, presentment at that place is necessary to render an indorser liable. When in a note a place of payment is indicated by way of memorandum only, presentment at that place is sufficient to render the indorser liable ; but a presentment to the maker elsewhere, if sufficient in other respects, will be equally good. The rules for the due presentation of notes, and excuses for non-presentment and delay, are the same as those applicable to bills.

Liability of the maker and indorser.³—The maker of a promissory note by making it engages that he will pay it according to its tenor, and is precluded from denying, to a holder in due course, the existence of the payee and his then capacity to indorse. The

¹ Act, § 87.

² *Gordon v. Kerr*, 1898, 25 R. 570.

³ Act, § 88.

position of the first indorser of a note corresponds to that of the drawer of an accepted bill, payable to drawer's order. It is doubtful whether the payee of a note can, under any circumstances, be the holder of it in due course.¹

With the above exceptions and those to be immediately specified, the provisions of the Act relating to bills of exchange apply, with the necessary modifications, to promissory notes. In applying those provisions, the maker of a note is deemed to correspond with the acceptor of a bill, and the first indorser of a note is deemed to correspond with the drawer of an accepted bill payable to drawer's order.

The following provisions as to bills do not apply to notes, viz., provisions relating to (*a*) presentment for acceptance, (*b*) acceptance, (*c*) acceptance *supra* protest, (*d*) bills in a set.

Where a foreign note is dishonoured, protest thereof is unnecessary.²

Stamp.—A promissory note must be stamped with an *ad valorem* stamp, and, unlike a bill of exchange, the duty is *ad valorem* whether the promissory note is payable on demand or at a determinable future period. The note must be stamped before execution,³ except (1) where it is made abroad, (2) where it bears an impressed stamp of sufficient value but wrong denomination, in either of which cases it may be competently after-stamped upon payment of the duty and a penalty of forty shillings if the note be not then payable according to its tenor, or of ten pounds if it be so payable. A note which is not stamped is

¹ *Wheeler v. Herdman*, [1902] 1 K. B. 361.

² Act, § 89.

³ *Welsh's Trs. v. Forbes*, 1885, 12 R. 851.

subject to the same disabilities as an unstamped bill of exchange, and cannot therefore be received in evidence. In England an insufficiently stamped promissory note was allowed to be handed to a witness for the purpose of refreshing his memory and obtaining from him an admission of a loan.¹

¹ *Birchall v. Bullough*, [1896] L. R. 1 Q. B. 325.

APPENDIX

BILLS OF EXCHANGE ACT, 1882

(45 & 46 VICT. CAP. 61)

PART I

PRELIMINARY

I. *Short title*.—This Act may be cited as the Bills of Exchange Act, 1882,

II. *Interpretation of terms*.—In this Act, unless the context otherwise requires,—

“Acceptance” means an acceptance completed by delivery or notification.

“Action” includes counter claim and set off.

“Banker” includes a body of persons whether incorporated or not who carry on the business of banking.

“Bankrupt” includes any person whose estate is vested in a trustee or assignee under the law for the time being in force relating to bankruptcy.

“Bearer” means the person in possession of a bill or note which is payable to bearer.

“Bill” means bill of exchange, and “note” means promissory note.

“Delivery” means transfer of possession, actual or constructive, from one person to another.

“Holder” means the payee or indorsee of a bill or note who is in possession of it, or the bearer thereof.

“Indorsement” means an indorsement completed by delivery.

"Issue" means the first delivery of a bill or note, complete in form to a person who takes it as a holder.

"Person" includes a body of persons whether incorporated or not.

"Value" means valuable consideration.

"Written" includes printed, and "writing" includes print.

PART II

BILLS OF EXCHANGE

Form and Interpretation

III. *Bill of exchange defined.*—(1.) A bill of exchange is an unconditional order in writing, addressed by one person to another, signed by the person giving it, requiring the person to whom it is addressed to pay on demand or at a fixed or determinable future time a sum certain in money to or to the order of a specified person, or to bearer.

(2.) An instrument which does not comply with these conditions, or which orders any act to be done in addition to the payment of money, is not a bill of exchange.

(3.) An order to pay out of a particular fund is not unconditional within the meaning of this section; but an unqualified order to pay, coupled with (a) an indication of a particular fund out of which the drawee is to reimburse himself or a particular account to be debited with the amount, or (b) a statement of the transaction which gives rise to the bill, is unconditional.

(4.) A bill is not invalid by reason—

(a.) That it is not dated;

(b.) That it does not specify the value given, or that any value has been given therefor;

(c.) That it does not specify the place where it is drawn or the place where it is payable.

IV. *Inland and foreign bills.*—(1.) An inland bill is a bill which is or on the face of it purports to be (a) both drawn and payable within the British Islands, or (b) drawn within the British Islands upon some person resident therein. Any other bill is a foreign bill.

For the purposes of this Act "British Islands" mean

any part of the United Kingdom of Great Britain and Ireland, the islands of Man, Guernsey, Jersey, Alderney, and Sark, and the islands adjacent to any of them being part of the dominions of Her Majesty.

(2.) Unless the contrary appear on the face of the bill the holder may treat it as an inland bill.

V. Effect where different parties to bill are the same person.

—(1.) A bill may be drawn payable to, or to the order of, the drawer; or it may be drawn payable to, or to the order of, the drawee.

(2.) Where in a bill drawer and drawee are the same person, or where the drawee is a fictitious person or a person not having capacity to contract, the holder may treat the instrument, at his option, either as a bill of exchange or as a promissory note.

VI. Address to drawee.—(1.) The drawee must be named or otherwise indicated in a bill with reasonable certainty.

(2.) A bill may be addressed to two or more drawees whether they are partners or not, but an order addressed to two drawees in the alternative or to two or more drawees in succession is not a bill of exchange.

VII. Certainty required as to payee.—(1.) Where a bill is not payable to bearer, the payee must be named or otherwise indicated therein with reasonable certainty.

(2.) A bill may be made payable to two or more payees jointly, or it may be made payable in the alternative to one of two, or one or some of several payees. A bill may also be made payable to the holder of an office for the time being.

(3.) Where the payee is a fictitious or non-existing person the bill may be treated as payable to bearer.

VIII. What bills are negotiable.—(1.) When a bill contains words prohibiting transfer, or indicating an intention that it should not be transferable, it is valid as between the parties thereto, but it is not negotiable.

(2.) A negotiable bill may be payable either to order or to bearer.

(3.) A bill is payable to bearer which is expressed to be

so payable, or on which the only or last indorsement is an indorsement in blank.

(4.) A bill is payable to order which is expressed to be so payable, or which is expressed to be payable to a particular person, and does not contain words prohibiting transfer or indicating an intention that it should not be transferable.

(5.) Where a bill, either originally or by indorsement, is expressed to be payable to the order of a specified person, and not to him or his order, it is nevertheless payable to him or his order at his option.

IX. *Sum payable*.—(1.) The sum payable by a bill is a sum certain within the meaning of this Act, although it is required to be paid—

(a.) With interest.

(b.) By stated instalments.

(c.) By stated instalments, with a provision that upon default in payment of any instalment the whole shall become due.

(d.) According to an indicated rate of exchange or according to a rate of exchange to be ascertained as directed by the bill.

(2.) Where the sum payable is expressed in words and also in figures, and there is a discrepancy between the two, the sum denoted by the words is the amount payable.

(3.) Where a bill is expressed to be payable with interest, unless the instrument otherwise provides, interest runs from the date of the bill, and if the bill is undated from the issue thereof.

X. *Bill payable on demand*.—(1.) A bill is payable on demand—

(a.) Which is expressed to be payable on demand, or at sight or on presentation; or

(b.) In which no time for payment is expressed.

(2.) Where a bill is accepted or indorsed when it is overdue, it shall, as regards the acceptor who so accepts, or any indorser who so indorses it, be deemed a bill payable on demand.

XI. *Bill payable at a future time*.—A bill is payable at a

determinable future time within the meaning of this Act which is expressed to be payable—

(1.) At a fixed period after date or sight.

(2.) On or at a fixed period after the occurrence of a specified event which is certain to happen, though the time of happening may be uncertain.

An instrument expressed to be payable on a contingency is not a bill, and the happening of the event does not cure the defect.

XII. *Omission of date in bill payable after date.*—Where a bill expressed to be payable at a fixed period after date is issued undated, or where the acceptance of a bill payable at a fixed period after sight is undated, any holder may insert therein the true date of issue or acceptance, and the bill shall be payable accordingly.

Provided that (1) where the holder in good faith and by mistake inserts a wrong date, and (2) in every case where a wrong date is inserted, if the bill subsequently comes into the hands of a holder in due course the bill shall not be avoided thereby, but shall operate and be payable as if the date so inserted had been the true date.

XIII. *Ante-dating and post-dating.*—(1.) Where a bill or an acceptance or any indorsement on a bill is dated, the date shall, unless the contrary be proved, be deemed to be the true date of the drawing, acceptance, or indorsement, as the case may be.

(2.) A bill is not invalid by reason only that it is ante-dated or post-dated, or that it bears date on a Sunday.

XIV. *Computation of time of payment.*—Where a bill is not payable on demand the day on which it falls due is determined as follows :

(1.) Three days, called days of grace, are, in every case where the bill itself does not otherwise provide, added to the time of payment as fixed by the bill, and the bill is due and payable on the last day of grace: Provided that—

(a.) When the last day of grace falls on Sunday, Christmas Day, Good Friday, or a day appointed by Royal proclamation as a

public fast or thanksgiving day, the bill is, except in the case hereinafter provided for, due and payable on the preceding business day ;

- (b.) When the last day of grace is a bank holiday (other than Christmas Day or Good Friday) under the Bank Holidays Act, 1871 [34 & 35 Vict. c. 17], and Acts amending or extending it, or when the last day of grace is a Sunday and the second day of grace is a bank holiday, the bill is due and payable on the succeeding business day.
- (2.) Where a bill is payable at a fixed period after date, after sight, or after the happening of a specified event, the time of payment is determined by excluding the day from which the time is to begin to run and by including the day of payment.
- (3.) Where a bill is payable at a fixed period after sight, the time begins to run from the date of the acceptance if the bill be accepted, and from the date of noting or protest if the bill be noted or protested for non-acceptance, or for non-delivery.
- (4.) The term "month" in a bill means calendar month.

XV. *Case of need.*—The drawer of a bill and any indorser may insert therein the name of a person to whom the holder may resort in case of need, that is to say, in case the bill is dishonoured by non-acceptance or non-payment. Such person is called the referee in case of need. It is in the option of the holder to resort to the referee in case of need or not as he may think fit.

XVI. *Optional stipulations by drawer or indorser.*—The drawer of a bill, and any indorser, may insert therein an express stipulation—

- (1.) Negativating or limiting his own liability to the holder :
- (2.) Waiving as regards himself some or all of the holder's duties.

XVII. *Definition and requisites of acceptance.*—(1.) The acceptance of a bill is the signification by the drawee of his assent to the order of the drawer.

(2.) An acceptance is invalid unless it complies with the following conditions, namely:

- (a.) It must be written on the bill and be signed by the drawee. The mere signature of the drawee without additional words is sufficient.
- (b.) It must not express that the drawee will perform his promise by any other means than the payment of money.

XVIII. *Time for acceptance.*—A bill may be accepted—

- (1.) Before it has been signed by the drawer, or while otherwise incomplete:
- (2.) When it is overdue, or after it has been dishonoured by a previous refusal to accept, or by non-payment:
- (3.) When a bill payable after sight is dishonoured by non-acceptance, and the drawee subsequently accepts it, the holder, in the absence of any different agreement, is entitled to have the bill accepted as of the date of first presentment to the drawee for acceptance.

XIX. *General and qualified acceptances.*—(1.) An acceptance is either (a) general or (b) qualified.

(2.) A general acceptance assents without qualification to the order of the drawer. A qualified acceptance in express terms varies the effect of the bill as drawn.

In particular an acceptance is qualified which is—

- (a.) conditional, that is to say, which makes payment by the acceptor dependent on the fulfilment of a condition therein stated:
- (b.) partial, that is to say, an acceptance to pay part only of the amount for which the bill is drawn:
- (c.) local, that is to say, an acceptance to pay only at a particular specified place:

An acceptance to pay at a particular place is a general acceptance, unless it expressly states that the bill is to be paid there only and not elsewhere:

- (d.) qualified as to time:

- (e.) the acceptance of some one or more of the drawees, but not of all.

XX. *Inchoate instruments*.—(1.) Where a simple signature on a blank stamped paper is delivered by the signer in order that it may be converted into a bill, it operates as a *primâ facie* authority to fill it up as a complete bill for any amount the stamp will cover, using the signature for that of the drawer, or the acceptor, or an indorser; and, in like manner, when a bill is wanting in any material particular, the person in possession of it has a *primâ facie* authority to fill up the omission in any way he thinks fit.

(2.) In order that any such instrument when completed may be enforceable against any person who became a party thereto prior to its completion, it must be filled up within a reasonable time, and strictly in accordance with the authority given. Reasonable time for this purpose is a question of fact.

Provided that if any such instrument after completion is negotiated to a holder in due course it shall be valid and effectual for all purposes in his hands, and he may enforce it as if it had been filled up within a reasonable time and strictly in accordance with the authority given.

XXI. *Delivery*.—(1.) Every contract on a bill, whether it be the drawer's, the acceptor's, or an indorser's, is incomplete and revocable, until delivery of the instrument in order to give effect thereto.

Provided that where an acceptance is written on a bill, and the drawee gives notice to or according to the directions of the person entitled to the bill that he has accepted it, the acceptance then becomes complete and irrevocable.

(2.) As between immediate parties, and as regards a remote party other than a holder in due course, the delivery—

(a.) in order to be effectual must be made either by or under the authority of the party drawing, accepting, or indorsing, as they case may be:

(b.) may be shown to have been conditional or for a special purpose only, and not for the purpose of transferring the property in the bill.

But if the bill be in the hands of a holder in due course

a valid delivery of the bill by all parties prior to him so as to make them liable to him is conclusively presumed.

(3.) Where a bill is no longer in the possession of a party who has signed it as drawer, acceptor, or indorser, a valid and unconditional delivery by him is presumed until the contrary is proved.

Capacity and Authority of Parties

XXII. *Capacity of parties.*—(1.) Capacity to incur liability as a party to a bill is co-extensive with capacity to contract.

Provided that nothing in this section shall enable a corporation to make itself liable as drawer, acceptor, or indorser of a bill unless it is competent to it so to do under the law for the time being in force relating to corporations.

(2.) Where a bill is drawn or indorsed by an infant, minor, or corporation having no capacity or power to incur liability on a bill, the drawing or indorsement entitles the holder to receive payment of the bill, and to enforce it against any other party thereto.

XXIII. *Signature essential to liability.*—No person is liable as drawer, indorser, or acceptor of a bill who has not signed it as such : Provided that—

(1.) Where a person signs a bill in a trade or assumed name, he is liable thereon as if he had signed it in his own name :

(2.) The signature of the name of a firm is equivalent to the signature by the person so signing of the names of all persons liable as partners in that firm.

XXIV. *Forged or unauthorised signature.*—Subject to the provisions of this Act, where a signature on a bill is forged or placed thereon without the authority of the person whose signature it purports to be, the forged or unauthorised signature is wholly inoperative, and no right to retain the bill or to give a discharge therefor or to enforce payment thereof against any party thereto can be acquired through or under that signature, unless the party against whom it is sought to retain or enforce payment of the bill

is precluded from setting up the forgery or want of authority.

Provided that nothing in this section shall affect the ratification of an unauthorised signature not amounting to a forgery.

XXV. *Procurator signatures*.—A signature by procuration operates as notice that the agent has but a limited authority to sign, and the principal is only bound by such signature if the agent in so signing was acting within the actual limits of his authority.

XXVI. *Person signing as agent or in representative capacity*.—(1.) Where a person signs a bill as drawer, indorser, or acceptor, and adds words to his signature, indicating that he signs for or on behalf of a principal, or in a representative character, he is not personally liable thereon; but the mere addition to his signature of words describing him as an agent, or as filling a representative character, does not exempt him from personal liability.

(2.) In determining whether a signature on a bill is that of the principal or that of the agent by whose hand it is written, the construction most favourable to the validity of the instrument shall be adopted.

The Consideration for a Bill

XXVII. *Value and holder for value*.—(1.) Valuable consideration for a bill may be constituted by—

(a.) Any consideration sufficient to support a simple contract;

(b.) An antecedent debt or liability. Such a debt or liability is deemed valuable consideration whether the bill is payable on demand or at a future time.

(2.) Where value has at any time been given for a bill the holder is deemed to be a holder for value as regards the acceptor and all parties to the bill who became parties prior to such time.

(3.) Where the holder of a bill has a lien on it, arising either from contract or by implication of law, he is deemed to be a holder for value to the extent of the sum for which he has a lien.

XXVIII. *Accommodation bill or party.*—(1.) An accommodation party to a bill is a person who has signed a bill as drawer, acceptor, or indorser, without receiving value therefor, and for the purpose of lending his name to some other person.

(2.) An accommodation party is liable on the bill to a holder for value; and it is immaterial whether, when such holder took the bill, he knew such party to be an accommodation party or not.

XXIX. *Holder in due course.*—(1.) A holder in due course is a holder who has taken a bill, complete and regular on the face of it, under the following conditions: namely—

(a.) That he became the holder of it before it was overdue, and without notice that it had been previously dishonoured, if such was the fact:

(b.) That he took the bill in good faith and for value, and that at the time the bill was negotiated to him he had no notice of any defect in the title of the person who negotiated it.

(2.) In particular the title of a person who negotiates a bill is defective within the meaning of this Act when he obtained the bill, or the acceptance thereof, by fraud, duress, or force and fear, or other unlawful means, or for an illegal consideration, or when he negotiates it in breach of faith, or under such circumstances as amount to a fraud.

(3.) A holder (whether for value or not), who derives his title to a bill through a holder in due course, and who is not himself a party to any fraud or illegality affecting it, has all the rights of that holder in due course as regards the acceptor and all parties to the bill prior to that holder.

XXX. *Presumption of value and good faith.*—(1.) Every party whose signature appears on a bill is *primâ facie* deemed to have become a party thereto for value.

(2.) Every holder of a bill is *primâ facie* deemed to be a holder in due course; but if in an action on a bill it is admitted or proved that the acceptance, issue, or subsequent negotiation of the bill is affected with fraud, duress, or force and fear, or illegality, the burden of proof is shifted,

unless and until the holder proves that, subsequent to the alleged fraud or illegality, value has in good faith been given for the bill.

Negotiation of Bills

XXXI. *Negotiation of bill.*—(1.) A bill is negotiated when it is transferred from one person to another in such a manner as to constitute the transferee the holder of the bill.

(2.) A bill payable to bearer is negotiated by delivery.

(3.) A bill payable to order is negotiated by the indorsement of the holder completed by delivery.

(4.) Where the holder of a bill payable to his order transfers it for value without indorsing it, the transfer gives the transferee such title as the transferor had in the bill, and the transferee in addition acquires the right to have the indorsement of the transferor.

(5.) Where any person is under obligation to indorse a bill in a representative capacity, he may indorse the bill in such terms as to negative personal liability.

XXXII. *Requisites of a valid indorsement.*—An indorsement in order to operate as a negotiation must comply with the following conditions, namely:—

(1.) It must be written on the bill itself and be signed by the indorser. The simple signature of the indorser on the bill, without additional words, is sufficient.

An indorsement written on an allonge, or on a “copy” of a bill issued or negotiated in a country where “copies” are recognised, is deemed to be written on the bill itself.

(2.) It must be an indorsement of the entire bill. A partial indorsement, that is to say, an indorsement which purports to transfer to the indorsee a part only of the amount payable, or which purports to transfer the bill to two or more indorsee severally, does not operate as a negotiation of the bill.

- (3.) Where a bill is payable to the order of two or more payees or indorsees who are not partners all must indorse, unless the one indorsing has authority to indorse for the others.
- (4.) Where, in a bill payable to order, the payee or indorsee is wrongly designated, or his name is misspelt, he may indorse the bill as therein described, adding, if he think fit, his proper signature.
- (5.) Where there are two or more indorsements on a bill, each indorsement is deemed to have been made in the order in which it appears on the bill, until the contrary is proved.
- (6.) An indorsement may be made in blank or special. It may also contain terms making it restrictive.

XXXIII. *Conditional indorsement.*—Where a bill purports to be indorsed conditionally the condition may be disregarded by the payer, and payment to the indorsee is valid whether the condition has been fulfilled or not.

XXXIV. *Indorsement in blank and special indorsement.*—

(1.) An indorsement in blank specifies no indorsee, and a bill so indorsed becomes payable to bearer.

(2.) A special indorsement specifies the person to whom, or to whose order, the bill is to be payable.

(3.) The provisions of this Act relating to a payee apply with the necessary modifications to an indorsee under a special indorsement.

(4.) When a bill has been indorsed in blank, any holder may convert the blank indorsement into a special indorsement by writing above the indorser's signature a direction to pay the bill to or to the order of himself or some other person.

XXXV. *Restrictive indorsement.*—(1.) An indorsement is restrictive which prohibits the further negotiation of the bill, or which expresses that it is a mere authority to deal with the bill as thereby directed, and not a transfer of the ownership thereof. as, for example, if a bill be indorsed "Pay *D.* only," or "Pay *D.* for the account of *X.*," or "Pay *D.* or order for collection."

(2.) A restrictive indorsement gives the indorsee the right to receive payment of the bill and to sue any party thereto that his indorser could have sued, but gives him no power to transfer his rights as indorsee unless it expressly authorise him to do so.

(3.) Where a restrictive indorsement authorises further transfer, all subsequent indorsees take the bill with the same rights and subject to the same liabilities as the first indorsee under the restrictive indorsement.

XXXVI. *Negotiation of overdue or dishonoured bill.*—(1.) Where a bill is negotiable in its origin it continues to be negotiable until it has been (a) restrictively indorsed or (b) discharged by payment or otherwise.

(2.) Where an overdue bill is negotiated, it can only be negotiated subject to any defect of title affecting it at its maturity, and thenceforward no person who takes it can acquire or give a better title than that which the person from whom he took it had.

(3.) A bill payable on demand is deemed to be overdue within the meaning and for the purposes of this section when it appears on the face of it to have been in circulation for an unreasonable length of time. What is an unreasonable length of time for this purpose is a question of fact.

(4.) Except where an indorsement bears date after the maturity of the bill, every negotiation is *prima facie* deemed to have been effected before the bill was overdue.

(5.) Where a bill which is not overdue has been dishonoured any person who takes it with notice of the dishonour takes it subject to any defect of title attaching thereto at the time of dishonour, but nothing in this subsection shall affect the rights of a holder in due course.

XXXVII. *Negotiation of bill to party already liable thereon*—Where a bill is negotiated back to the drawer, or to a prior indorser or to the acceptor, such party may, subject to the provisions of this Act, re-issue and further negotiate the bill, but he is not entitled to enforce payment of the bill against any intervening party to whom he was previously liable.

XXXVIII. *Rights of the holder.*—The rights and powers of the holder of a bill are as follows :

- (1.) He may sue on the bill in his own name :
- (2.) Where he is a holder in due course, he holds the bill free from any defect of title of prior parties, as well as from mere personal defences available to prior parties among themselves, and may enforce payment against all parties liable on the bill :
- (3.) Where his title is defective (*a*) if he negotiates the bill to a holder in due course, that holder obtains a good and complete title to the bill, and (*b*) if he obtains payment of the bill the person who pays him in due course gets a valid discharge for the bill.

General Duties of the Holder

XXXIX. *When presentment for acceptance is necessary.*—

(1.) Where a bill is payable after sight, presentment for acceptance is necessary in order to fix the maturity of the instrument.

(2.) Where a bill expressly stipulates that it shall be presented for acceptance, or where a bill is drawn payable elsewhere than at the residence or place of business of the drawee, it must be presented for acceptance before it can be presented for payment.

(3.) In no other case is presentment for acceptance necessary in order to render liable any party to the bill.

(4.) Where the holder of a bill, drawn payable elsewhere than at the place of business or residence of the drawee, has not time, with the exercise of reasonable diligence, to present the bill for acceptance before presenting it for payment on the day that it falls due, the delay caused by presenting the bill for acceptance before presenting it for payment is excused, and does not discharge the drawer and indorsers.

XL. *Time for presenting bill payable after sight.*—(1.) Subject to the provisions of this Act, when a bill payable after sight is negotiated, the holder must either present it for acceptance or negotiate it within a reasonable time.

(2.) If he do not do so, the drawer and all indorsers prior to that holder are discharged.

(3.) In determining what is a reasonable time within the meaning of this section, regard shall be had to the nature of the bill, the usage of trade with respect to similar bills, and the facts of the particular case.

XLI. Rules as to presentment for acceptance, and excuses for non-presentment.—(1.) A bill is duly presented for acceptance which is presented in accordance with the following rules :—

(a.) The presentment must be made by or on behalf of the holder to the drawee or to some person authorised to accept or refuse acceptance on his behalf at a reasonable hour on a business day and before the bill is overdue :

(b.) Where a bill is addressed to two or more drawees, who are not partners, presentment must be made to them all, unless one has authority to accept for all, then presentment may be made to him only :

(c.) Where the drawee is dead presentment may be made to his personal representative :

(d.) Where the drawee is bankrupt, presentment may be made to him or to his trustee :

(e.) Where authorised by agreement or usage, a presentment through the post office is sufficient.

(2.) Presentment in accordance with these rules is excused, and a bill may be treated as dishonoured by non-acceptance—

(a.) Where the drawee is dead or bankrupt, or is a fictitious person or a person not having capacity to contract by bill:

(b.) Where, after the exercise of reasonable diligence, such presentment cannot be effected :

(c.) Where although the presentment has been irregular, acceptance has been refused on some other ground :

(3.) The fact that the holder has reason to believe that the bill, on presentment, will be dishonoured does not excuse presentment.

XLII. Non-acceptance.—(1.) When a bill is duly presented for acceptance and is not accepted within the

customary time, the person presenting it must treat it as dishonoured by non-acceptance. If he do not, the holder shall lose his right of recourse against the drawer and indorsers.

XI.III. Dishonour by non-acceptance and its consequences.—

(1.) A bill is dishonoured by non-acceptance—

(a.) when it is duly presented for acceptance, and such an acceptance as is prescribed by this Act is refused or cannot be obtained; or

(b.) when presentment for acceptance is excused and the bill is not accepted.

(2.) Subject to the provisions of this Act when a bill is dishonoured by non-acceptance, an immediate right of recourse against the drawer and indorsers accrues to the holder, and no presentment for payment is necessary.

XLIV. Duties as to qualified acceptances.—(1.) The holder of a bill may refuse to take a qualified acceptance, and if he does not obtain an unqualified acceptance may treat the bill as dishonoured by non-acceptance.

(2.) Where a qualified acceptance is taken and the drawer or an indorser has not expressly or impliedly authorised the holder to take a qualified acceptance, or does not subsequently assent thereto, such drawer or indorser is discharged from his liability on the bill.

The provisions of this subsection do not apply to a partial acceptance, whereof due notice has been given. Where a foreign bill has been accepted as to part, it must be protested as to the balance.

(3.) When the drawer or indorser of a bill receives notice of a qualified acceptance, and does not within a reasonable time express his dissent to the holder he shall be deemed to have assented thereto.

*XLV. Rules as to presentment for payment.—*Subject to the provisions of this Act a bill must be duly presented for payment. If it be not so presented the drawer and indorsers shall be discharged.

A bill is duly presented for payment which is presented in accordance with the following rules:—

- (1.) Where the bill is not payable on demand, presentment must be made on the day it falls due.
- (2.) Where the bill is payable on demand, then, subject to the provisions of this Act, presentment must be made within a reasonable time after its issue in order to render the drawer liable, and within a reasonable time after its indorsement, in order to render the indorser liable.

In determining what is a reasonable time, regard shall be had to the nature of the bill, the usage of trade with regard to similar bills, and the facts of the particular case.

- (3.) Presentment must be made by the holder or by some person authorised to receive payment on his behalf at a reasonable hour on a business day, at the proper place as hereinafter defined, either to the person designated by the bill as payer, or to some person authorised to pay or refuse payment on his behalf, if with the exercise of reasonable diligence such person can there be found.
- (4.) A bill is presented at the proper place:—
 - (a.) Where a place of payment is specified in the bill and the bill is there presented.
 - (b.) Where no place of payment is specified, but the address of the drawee or acceptor is given in the bill, and the bill is there presented.
 - (c.) Where no place of payment is specified and no address given, and the bill is presented at the drawee's or acceptor's place of business if known, and if not, at his ordinary residence if known.
 - (d.) In any other case if presented to the drawee or acceptor wherever he can be found, or if presented at his last known place of business or residence.
- (5.) Where a bill is presented at the proper place, and after the exercise of reasonable diligence no person authorised to pay or refuse payment can be found there, no further presentment to the drawee or acceptor is required.
- (6.) Where a bill is drawn upon, or accepted by two or more persons who are not partners, and no place

of payment is specified, presentment must be made to them all.

- (7.) Where the drawee or acceptor of a bill is dead, and no place of payment is specified, presentment must be made to a personal representative, if such there be, and with the exercise of reasonable diligence he can be found.
- (8.) Where authorised by agreement or usage a presentment through the post-office is sufficient.

XLVI. *Excuses for delay or non-presentment for payment.*—

- (1.) Delay in making presentment for payment is excused when the delay is caused by circumstances beyond the control of the holder, and not imputable to his default, misconduct, or negligence. When the cause of delay ceases to operate presentment must be made with reasonable diligence.

- (2.) Presentment for payment is dispensed with—

- (a.) Where, after the exercise of reasonable diligence, presentment, as required by this Act, cannot be effected.

The fact that the holder has reason to believe that the bill will, on presentment, be dishonoured, does not dispense with the necessity for presentment.

- (b.) Where the drawee is a fictitious person.

- (c.) As regards the drawer where the drawee or acceptor is not bound, as between himself and the drawer, to accept or pay the bill, and the drawer has no reason to believe that the bill would be paid if presented.

- (d.) As regards an indorser, where the bill was accepted or made for the accommodation of that indorser, and he has no reason to expect that the bill would be paid if presented.

- (e.) By waiver of presentment, express or implied.

XLVII. *Dishonour by non-payment.*—(1.) A bill is dishonoured by non-payment (a) when it is duly presented for payment and payment is refused or cannot be obtained, or (b) when presentment is excused and the bill is overdue and unpaid.

- (2.) Subject to the provisions of this Act, when a bill

is dishonoured by non-payment, an immediate right of recourse against the drawer and indorsers accrues to the holder.

XLVIII. *Notice of dishonour and effect of non-notice.*—Subject to the provisions of this Act, when a bill has been dishonoured by non-acceptance or by non-payment, notice of dishonour must be given to the drawer and each indorser, and any drawer or indorser to whom such notice is not given is discharged; Provided that—

(1.) Where a bill is dishonoured by non-acceptance, and notice of dishonour is not given, the rights of a holder in due course subsequent to the omission shall not be prejudiced by the omission.

(2.) Where a bill is dishonoured by non-acceptance and due notice of dishonour is given, it shall not be necessary to give notice of a subsequent dishonour by non-payment unless the bill shall in the meantime have been accepted.

XLIX. *Rules as to notice of dishonour.*—Notice of dishonour in order to be valid and effectual must be given in accordance with the following rules:—

(1.) The notice must be given by or on behalf of the holder, or by or on behalf of an indorser who, at the time of giving it, is himself liable on the bill.

(2.) Notice of dishonour may be given by an agent either in his own name, or in the name of any party entitled to give notice, whether that party be his principal or not.

(3.) Where the notice is given by or on behalf of the holder, it enures for the benefit of all subsequent holders and all prior indorsers who have a right of recourse against the party to whom it is given.

(4.) Where notice is given by or on behalf of an indorser entitled to give notice as hereinbefore provided, it enures for the benefit of the holder and all indorsers subsequent to the party to whom notice is given.

(5.) The notice may be given in writing or by personal communication, and may be given in any terms which sufficiently identify the bill, and intimate that the bill has been dishonoured by non-acceptance or non-payment.

- (6.) The return of a dishonoured bill to the drawer or an indorser is, in point of form, deemed a sufficient notice of dishonour.
- (7.) A written notice need not be signed, and an insufficient written notice may be supplemented and validated by verbal communication. A misdescription of the bill shall not vitiate the notice unless the party to whom the notice is given is in fact misled thereby.
- (8.) Where notice of dishonour is required to be given to any person, it may be given either to the party himself, or to his agent in that behalf.
- (9.) Where the drawer or indorser is dead, and the party giving notice knows it, the notice must be given to a personal representative, if such there be, and with the exercise of reasonable diligence he can be found.
- (10.) Where the drawer or indorser is bankrupt, notice may be given either to the party himself or to the trustee.
- (11.) Where there are two or more drawers or indorsers who are not partners, notice must be given to each of them, unless one of them has authority to receive such notice for the others.
- (12.) The notice may be given as soon as the bill is dishonoured, and must be given within a reasonable time thereafter.

In the absence of special circumstances notice is not deemed to have been given within a reasonable time, unless—

- (a.) where the person giving and the person to receive notice reside in the same place, the notice is given or sent off in time to reach the latter on the day after the dishonour of the bill.
- (b.) where the person giving and the person to receive notice reside in different places, the notice is sent off on the day after the dishonour of the bill, if there be a post at a convenient hour on that day, and if there be no such post on that day then by the next post thereafter.

- (13.) Where a bill when dishonoured is in the hands of an agent, he may either himself give notice to the parties liable on the bill, or he may give notice to his principal. If he give notice to his principal, he must do so within the same time as if he were the holder, and the principal upon receipt of such notice has himself the same time for giving notice as if the agent had been an independent holder.
- (14.) Where a party to a bill receives due notice of dishonour, he has after the receipt of such notice the same period of time for giving notice to antecedent parties that the holder has after the dishonour.
- (15.) Where a notice of dishonour is duly addressed and posted, the sender is deemed to have given due notice of dishonour, notwithstanding any miscarriage by the post-office.

L. Excuses for non-notice and delay.—(1.) Delay in giving notice of dishonour is excused where the delay is caused by circumstances beyond the control of the party giving notice, and not imputable to his default, misconduct, or negligence. When the cause of delay ceases to operate the notice must be given with reasonable diligence.

(2.) Notice of dishonour is dispensed with—

- (a.) When, after the exercise of reasonable diligence, notice as required by this Act cannot be given to or does not reach the drawer or indorser sought to be charged :
- (b.) By waiver, express or implied. Notice of dishonour may be waived before the time of giving notice has arrived, or after the omission to give due notice :
- (c.) As regards the drawer in the following cases, namely, (1) where drawer and drawee are the same person, (2) where the drawee is a fictitious person or a person not having capacity to contract, (3) where the drawer is the person to whom the bill is presented for payment, (4) where the drawee or acceptor is as between himself and the drawer under no obligation to accept or pay

the bill, (5) where the drawer has countermanded payment:

- (d.) As regards the indorser in the following cases, namely, (1) where the drawee is a fictitious person or a person not having capacity to contract and the indorser was aware of the fact at the time he indorsed the bill, (2) where the indorser is the person to whom the bill is presented for payment, (3) where the bill was accepted or made for his accommodation.

LI. *Noting or protest of bill.*—(1.) Where an inland bill has been dishonoured it may, if the holder think fit, be noted for non-acceptance or non-payment, as the case may be; but it shall not be necessary to note or protest any such bill in order to preserve the recourse against the drawer or indorser.

(2.) Where a foreign bill, appearing on the face of it to be such, has been dishonoured by non-acceptance it must be duly protested for non-acceptance, and where such a bill, which has not been previously dishonoured by non-acceptance, is dishonoured by non-payment it must be duly protested for non-payment. If it be not so protested the drawer and indorsers are discharged. Where a bill does not appear on the face of it to be a foreign bill, protest thereof in case of dishonour is unnecessary.

(3.) A bill which has been protested for non-acceptance may be subsequently protested for non-payment.

(4.) Subject to the provisions of this Act, when a bill is noted or protested, it must be noted on the day of its dishonour. When a bill has been duly noted, the protest may be subsequently extended as of the date of the noting.

(5.) Where the acceptor of a bill becomes bankrupt or insolvent or suspends payment before it matures, the holder may cause the bill to be protested for better security against the drawer and indorsers.

(6.) A bill must be protested at the place where it is dishonoured: Provided that

- (a.) When a bill is presented through the post-office, and returned by post dishonoured, it may be protested at the place to which it is returned and on the day of its return if received during business

hours, and if not received during business hours, then not later than the next business day.

(6.) When a bill drawn payable at the place of business or residence of some person other than the drawee has been dishonoured by non-acceptance, it must be protested for non-payment at the place where it is expressed to be payable, and no further presentment for payment to, or demand on, the drawee is necessary.

(7.) A protest must contain a copy of the bill, and must be signed by the notary making it, and must specify—

(a.) The person at whose request the bill is protested :

(b.) The place and date of protest, the cause or reason for protesting the bill, the demand made, and the answer given, if any, or the fact that the drawee or acceptor could not be found.

(8.) Where a bill is lost or destroyed, or is wrongly detained from the person entitled to hold it, protest may be made on a copy or written particulars thereof.

(9.) Protest is dispensed with by any circumstance which would dispense with notice of dishonour. Delay in noting or protesting is excused when the delay is caused by circumstances beyond the control of the holder, and not imputable to his default, misconduct, or negligence. When the cause of delay ceases to operate the bill must be noted or protested with reasonable diligence.

LII. *Duties of holder as regards drawee or acceptor.*—

(1.) When a bill is accepted generally presentment for payment is not necessary in order to render the acceptor liable.

(2.) When by the terms of a qualified acceptance presentment for payment is required, the acceptor, in the absence of an express stipulation to that effect, is not discharged by the omission to present the bill for payment on the day that it matures.

(3.) In order to render the acceptor of a bill liable it is not necessary to protest it, or that notice of dishonour should be given to him.

(4.) Where the holder of a bill presents it for payment, he shall exhibit the bill to the person from whom he demands payment, and when a bill is paid the holder shall forthwith deliver it up to the party paying it.

Liabilities of Parties

LIII. *Funds in hands of drawee.*—(1.) A bill, of itself, does not operate as an assignment of funds in the hands of the drawee available for the payment thereof, and the drawee of a bill who does not accept as required by this Act is not liable on the instrument. This subsection shall not extend to Scotland.

(2.) In Scotland, where the drawee of a bill has in his hands funds available for the payment thereof, the bill operates as an assignment of the sum for which it is drawn in favour of the holder, from the time when the bill is presented to the drawee.

LIV. *Liability of acceptor.*—The acceptor of a bill, by accepting it—

(1.) Engages that he will pay it according to the tenor of his acceptance :

(2.) Is precluded from denying to a holder in due course :

(a.) The existence of the drawer, the genuineness of his signature, and his capacity and authority to draw the bill ;

(b.) In the case of a bill payable to drawer's order, the then capacity of the drawer to indorse, but not the genuineness or validity of his indorsement ;

(c.) In the case of a bill payable to the order of a third person the existence of the payee and his then capacity to indorse, but not the genuineness or validity of his indorsement.

LV. *Liability of drawer or indorser.*—(1.) The drawer of a bill by drawing it—

(a.) Engages that on due presentment it shall be accepted and paid according to its tenor, and that if it be dishonoured he will compensate the holder or any indorser who is compelled to pay it, provided that the requisite proceedings on dishonour be duly taken ;

- (b.) Is precluded from denying to a holder in due course the existence of the payee and his then capacity to indorse.
- (2.) The indorser of a bill by indorsing it—
- (a.) Engages that on due presentment it shall be accepted and paid according to its tenor, and that if it be dishonoured he will compensate the holder or a subsequent indorser who is compelled to pay it, provided that the requisite proceedings on dishonour be duly taken ;
- (b.) Is precluded from denying to a holder in due course the genuineness and regularity in all respects of the drawer's signature and all previous indorsements ;
- (c.) Is precluded from denying to his immediate or a subsequent indorsee that the bill was at the time of his indorsement a valid and subsisting bill, and that he had then a good title thereto.

LVI. *Stranger signing bill liable as indorser.*—Where a person signs a bill otherwise than as drawer or acceptor, he thereby incurs the liabilities of an indorser to a holder in due course.

LVII. *Measure of damages against parties to dishonoured bill.*—Where a bill is dishonoured, the measure of damages, which shall be deemed to be liquidated damages, shall be as follows :—

- (1.) The holder may recover from any party liable on the bill, and the drawer who has been compelled to pay the bill may recover from the acceptor, and an indorser who has been compelled to pay the bill may recover from the acceptor or from the drawer, or from a prior indorser—
 - (a.) The amount of the bill :
 - (b.) Interest thereon from the time of presentment for payment if the bill is payable on demand, and from the maturity of the bill in any other case :
 - (c.) The expenses of noting, or, when protest is necessary, and the protest has been extended, the expenses of protest.

- (2.) In the case of a bill which has been dishonoured abroad, in lieu of the above damages, the holder may recover from the drawer or an indorser, and the drawer or an indorser who has been compelled to pay the bill may recover from any party liable to him, the amount of the re-exchange with interest thereon until the time of payment.
- (3.) Where, by this Act interest may be recovered as damages, such interest may, if justice require it, be withheld wholly or in part, and where a bill is expressed to be payable with interest at a given rate, interest as damages may or may not be given at the same rate as interest proper.

LVIII. *Transferor by delivery and transferee*.—(1.) Where the holder of a bill payable to bearer negotiates it by delivery without indorsing it, he is called a “transferor by delivery.”

(2.) A transferor by delivery is not liable on the instrument.

(3.) A transferor by delivery who negotiates a bill thereby warrants to his immediate transferee being a holder for value that the bill is what it purports to be, that he has a right to transfer it, and that at the time of transfer he is not aware of any fact which renders it valueless.

Discharge of Bill

LIX. *Payment in due course*.—(1.) A bill is discharged by payment in due course by or on behalf of the drawee or acceptor.

“Payment in due course” means payment made at or after the maturity of the bill to the holder thereof in good faith and without notice that his title to the bill is defective.

(2.) Subject to the provisions hereinafter contained, when a bill is paid by the drawer or an indorser it is not discharged ; but

(a.) Where a bill payable to, or to the order of, a third party is paid by the drawer, the drawer may enforce payment thereof against the acceptor, but may not re-issue the bill.

(b.) Where a bill is paid by an indorser, or where a bill payable to drawer's order is paid by the drawer, the party paying it is remitted to his former rights as regards the acceptor or antecedent parties, and he may, if he thinks fit, strike out his own and subsequent indorsements, and again negotiate the bill.

(3.) Where an accommodation bill is paid in due course by the party accommodated the bill is discharged.

LX. *Banker paying demand draft whereon indorsement is forged.*—When a bill payable to order on demand is drawn on a banker, and the banker on whom it is drawn pays the bill in good faith and in the ordinary course of business, it is not incumbent on the banker to show that the indorsement of the payee or any subsequent indorsement was made by or under the authority of the person whose indorsement it purports to be, and the banker is deemed to have paid the bill in due course, although such indorsement has been forged or made without authority.

LXI. *Acceptor the holder at maturity.*—When the acceptor of a bill is or becomes the holder of it at or after its maturity, in his own right, the bill is discharged.

LXII. *Express waiver.*—(1.) When the holder of a bill at or after its maturity absolutely and unconditionally renounces his rights against the acceptor the bill is discharged.

The renunciation must be in writing, unless the bill is delivered up to the acceptor.

(2.) The liabilities of any party to a bill may in like manner be renounced by the holder before, at, or after its maturity; but nothing in this section shall affect the rights of a holder in due course without notice of the renunciation.

LXIII. *Cancellation.*—(1.) Where a bill is intentionally cancelled by the holder or his agent, and the cancellation is apparent thereon, the bill is discharged.

(2.) In like manner any party liable on a bill may be discharged by the intentional cancellation of his signature

by the holder or his agent. In such case any indorser who would have had a right of recourse against the party whose signature is cancelled, is also discharged.

(3.) A cancellation made unintentionally, or under a mistake, or without the authority of the holder is inoperative; but where a bill or any signature thereon appears to have been cancelled the burden of proof lies on the party who alleges that the cancellation was made unintentionally, or under a mistake, or without authority.

LXIV. *Alteration of bill.*—(1.) Where a bill or acceptance is materially altered without the assent of all parties liable on the bill, the bill is avoided except as against a party who has himself made, authorised, or assented to the alteration, and subsequent indorsers.

Provided that,

Where a bill has been materially altered, but the alteration is not apparent, and the bill is in the hands of a holder in due course, such holder may avail himself of the bill as if it had not been altered, and may enforce payment of it according to its original tenor.

(2.) In particular the following alterations are material, namely, any alteration of the date, the sum payable, the time of payment, the place of payment, and, where a bill has been accepted generally, the addition of a place of payment without the acceptor's assent.

Acceptance and Payment for Honour

LXV. *Acceptance for honour *suprà* protest.*—(1.) Where a bill of exchange has been protested for dishonour by non-acceptance, or protested for better security, and is not overdue, any person, not being a party already liable thereon, may, with the consent of the holder, intervene and accept the bill *suprà* protest, for the honour of any party liable thereon, or for the honour of the person for whose account the bill is drawn.

(2.) A bill may be accepted for honour for part only of the sum for which it is drawn.

(3.) An acceptance for honour *suprà* protest in order to be valid must—

(a.) be written on the bill, and indicate that it is an acceptance for honour :

(b.) be signed by the acceptor for honour.

(4.) Where an acceptance for honour does not expressly state for whose honour it is made, it is deemed to be an acceptance for the honour of the drawer.

(5.) Where a bill payable after sight is accepted for honour, its maturity is calculated from the date of the noting for non-acceptance, and not from the date of the acceptance for honour.

LXVI. *Liability of acceptor for honour.*—(1.) The acceptor for honour of a bill by accepting it engages that he will, on due presentment, pay the bill according to the tenor of his acceptance, if it is not paid by the drawee, provided it has been duly presented for payment, and protested for non-payment, and that he receives notice of these facts.

(2.) The acceptor for honour is liable to the holder and to all parties to the bill subsequent to the party for whose honour he has accepted.

LXVII.—*Presentment to acceptor for honour.*—(1.) Where a dishonoured bill has been accepted for honour *suprà* protest, or contains a reference in case of need, it must be protested for non-payment before it is presented for payment to the acceptor for honour, or referee in case of need.

(2.) Where the address of the acceptor for honour is in the same place where the bill is protested for non-payment, the bill must be presented to him not later than the day following its maturity; and where the address of the acceptor for honour is in some place other than the place where it was protested for non-payment, the bill must be forwarded not later than the day following its maturity for presentment to him.

(3.) Delay in presentment or non-presentment is excused by any circumstance which would excuse delay in presentment for payment or non-presentment for payment.

(4.) When a bill of exchange is dishonoured by the acceptor for honour it must be protested for non-payment by him.

LXVIII. *Payment for honour ^{suprà} protest.*—(1.) Where a bill has been protested for non-payment, any person may intervene and pay it *suprà* protest for the honour of any party liable thereon, or for the honour of the person for whose account the bill is drawn.

(2.) Where two or more persons offer to pay a bill for the honour of different parties, the person whose payment will discharge most parties to the bill shall have the preference.

(3.) Payment for honour *suprà* protest, in order to operate as such and not as a mere voluntary payment, must be attested by a notarial act of honour, which may be appended to the protest or form an extension of it.

(4.) The notarial act of honour must be founded on a declaration made by the payer for honour, or his agent in that behalf, declaring his intention to pay the bill for honour, and for whose honour he pays.

(5.) Where a bill has been paid for honour, all parties subsequent to the party for whose honour it is paid are discharged, but the payer for honour is subrogated for, and succeeds to both the rights and duties of, the holder as regards the party for whose honour he pays, and all parties liable to that party.

(6.) The payer for honour on paying to the holder the amount of the bill and the notarial expenses incidental to its dishonour is entitled to receive both the bill itself and the protest. If the holder do not on demand deliver them up he shall be liable to the payer for honour in damages.

(7.) Where the holder of a bill refuses to receive payment *suprà* protest he shall lose his right of recourse against any party who would have been discharged by such payment.

Lost Instruments

LXIX. *Holder's right to duplicate of lost bill.*—Where a bill has been lost before it is overdue, the person who was the holder of it may apply to the drawer to give him another bill of the same tenor, giving security to the drawer if required to indemnify him against all persons whatever in case the bill alleged to have been lost shall be found again.

If the drawer on request as aforesaid refuses to give such duplicate bill, he may be compelled to do so.

LXX. *Action on lost bill.*—In any action or proceeding upon a bill, the court or a judge may order that the loss of the instrument shall not be set up, provided an indemnity be given to the satisfaction of the court or judge against the claims of any other person upon the instrument in question.

Bill in a Set

LXXI. *Rules as to sets.*—(1.) Where a bill is drawn in a set, each part of the set being numbered, and containing a reference to the other parts, the whole of the parts constitute one bill.

(2.) Where the holder of a set indorses two or more parts to different persons, he is liable on every such part, and every indorser subsequent to him is liable on the part he has himself indorsed as if the said parts were separate bills.

(3.) Where two or more parts of a set are negotiated to different holders in due course, the holder whose title first accrues is as between such holders deemed the true owner of the bill; but nothing in this subsection shall affect the rights of a person who in due course accepts or pays the part first presented to him.

(4.) The acceptance may be written on any part, and it must be written on one part only.

If the drawee accepts more than one part, and such accepted parts get into the hands of different holders in due course, he is liable on every such part as if it were a separate bill.

(5.) When the acceptor of a bill drawn in a set pays it without requiring the part bearing his acceptance to be delivered up to him, and that part at maturity is outstanding in the hands of a holder in due course, he is liable to the holder thereof.

(6.) Subject to the preceding rules, where any one part of a bill drawn in a set is discharged by payment or otherwise, the whole bill is discharged.

Conflict of Laws

LXXII. *Rules where laws conflict.*—Where a bill drawn in one country is negotiated, accepted, or payable in another, the rights, duties, and liabilities of the parties thereto are determined as follows :

- (1.) The validity of a bill as regards requisites in form is determined by the law of the place of issue, and the validity as regards requisites in form of the supervening contracts, such as acceptance, or indorsement, or acceptance *suprà* protest, is determined by the law of the place where such contract was made.

Provided that—

- (a.) Where a bill is issued out of the United Kingdom it is not invalid by reason only that it is not stamped in accordance with the law of the place of issue :
- (b.) Where a bill, issued out of the United Kingdom, conforms, as regards requisites in form, to the law of the United Kingdom, it may, for the purpose of enforcing payment thereof, be treated as valid as between all persons who negotiate, hold, or become parties to it in the United Kingdom.
- (2.) Subject to the provisions of this Act, the interpretation of the drawing, indorsement, acceptance, or acceptance *suprà* protest of a bill, is determined by the law of the place where such contract is made.

Provided that where an inland bill is indorsed in a foreign country the indorsement shall as regards the payer be interpreted according to the law of the United Kingdom.

- (3.) The duties of the holder with respect to presentment for acceptance or payment and the necessity for or sufficiency of a protest or notice of dishonour, or otherwise, are determined by the law of the place where the act is done or the bill is dishonoured.
- (4.) Where a bill is drawn out of but payable in the

United Kingdom and the sum payable is not expressed in the currency of the United Kingdom, the amount shall, in the absence of some express stipulation, be calculated according to the rate of exchange for sight drafts at the place of payment on the day the bill is payable.

- (5.) Where a bill is drawn in one country and is payable in another, the due date thereof is determined according to the law of the place where it is payable.

PART III

CHEQUES ON A BANKER

LXXIII. *Cheque defined.*—A cheque is a bill of exchange drawn on a banker payable on demand.

Except as otherwise provided in this part, the provisions of this Act applicable to a bill of exchange payable on demand apply to a cheque.

LXXIV. *Presentment of cheque for payment.*—Subject to the provisions of this Act—

- (1.) Where a cheque is not presented for payment within a reasonable time of its issue, and the drawer or the person on whose account it is drawn had the right at the time of such presentment as between him and the banker to have the cheque paid and suffers actual damage through the delay, he is discharged to the extent of such damage, that is to say, to the extent to which such drawer or person is a creditor of such banker to a larger amount than he would have been had such cheque been paid.
- (2.) In determining what is a reasonable time regard shall be had to the nature of the instrument, the usage of trade and of bankers, and the facts of the particular case.
- (3.) The holder of such cheque as to which such drawer or person is discharged shall be a creditor, in lieu of such drawer or person, of such banker to the

extent of such discharge, and entitled to recover the amount from him.

LXXV. *Revocation of banker's authority.*—The duty and authority of a banker to pay a cheque drawn on him by his customer are determined by—

- (1.) Countersmand of payment :
- (2.) Notice of the customer's death.

Crossed Cheques

[Sections 76 to 82 are extended to any document issued by a customer of any banker and intended to enable any person or body corporate to obtain payment from such banker of the sum mentioned in such document as if such document were a cheque, - Revenue Act, 1883, section 17.]

LXXVI. *General and special crossings defined.*—(1.) Where a cheque bears across its face an addition of—

- (a.) The words “and company” or any abbreviation thereof between two parallel transverse lines, either with or without the words “not negotiable”; or
 - (b.) Two parallel transverse lines simply either with or without the words “not negotiable”;
- that addition constitutes a crossing, and the cheque is crossed generally.

(2.) Where a cheque bears across its face an addition of the name of a banker, either with or without the words “not negotiable,” that addition constitutes a crossing, and the cheque is crossed specially and to that banker.

LXXVII. *Crossing by drawer or after issue.*—(1.) A cheque may be crossed generally or specially by the drawer.

(2.) Where a cheque is uncrossed, the holder may cross it generally or specially.

(3.) Where a cheque is crossed generally the holder may cross it specially.

(4.) Where a cheque is crossed generally or specially, the holder may add the words “not negotiable.”

(5.) Where a cheque is crossed specially, the banker to

whom it is crossed may again cross it specially to another banker for collection.

(6.) Where an uncrossed cheque, or a cheque crossed generally, is sent to a banker for collection, he may cross it specially to himself.

LXXVIII. *Crossing a material part of cheque.*—A crossing authorised by this Act is a material part of the cheque ; it shall not be lawful for any person to obliterate or, except as authorised by this Act, to add to or alter the crossing.

LXXIX. *Duties of banker as to crossed cheques.*—(1.) Where a cheque is crossed specially to more than one banker, except when crossed to an agent for collection being a banker, the banker on whom it is drawn shall refuse payment thereof.

(2.) Where the banker on whom a cheque is drawn which is so crossed nevertheless pays the same, or pays a cheque crossed generally otherwise than to a banker, or if crossed specially otherwise than to the banker to whom it is crossed, or his agent for collection being a banker, he is liable to the true owner of the cheque for any loss he may sustain owing to the cheque having been so paid.

Provided that where a cheque is presented for payment which does not at the time of presentment appear to be crossed, or to have had a crossing which has been obliterated, or to have been added to or altered otherwise than as authorised by this Act, the banker paying the cheque in good faith and without negligence shall not be responsible or incur any liability, nor shall the payment be questioned by reason of the cheque having been crossed, or of the crossing having been obliterated or having been added to or altered otherwise than as authorised by this Act, and of payment having been made otherwise than to a banker or to the banker to whom the cheque is or was crossed, or to his agent for collection being a banker, as the case may be.

LXXX. *Protection to banker and drawer where cheque is crossed.*—Where the banker, on whom a crossed cheque is drawn, in good faith and without negligence pays it, if crossed generally, to a banker, and if crossed specially, to the banker to whom it is crossed, or his agent for collec-

tion being a banker, the banker paying the cheque, and, if the cheque has come into the hands of the payee, the drawer, shall respectively be entitled to the same rights and be placed in the same position as if payment of the cheque had been made to the true owner thereof.

LXXXI. *Effect of crossing on holder.*—Where a person takes a crossed cheque which bears on it the words “not negotiable,” he shall not have and shall not be capable of giving a better title to the cheque than that which the person from whom he took it had.

LXXXII. *Protection to collecting banker.*—Where a banker in good faith and without negligence receives payment for a customer of a cheque crossed generally or specially to himself, and the customer has no title or a defective title thereto, the banker shall not incur any liability to the true owner of the cheque by reason only of having received such payment.

PART IV

PROMISSORY NOTES

LXXXIII. *Promissory note defined.*—(1.) A promissory note is an unconditional promise in writing made by one person to another signed by the maker, engaging to pay, on demand or at a fixed or determinable future time, a sum certain in money, to, or to the order of, a specified person or to bearer.

(2.) An instrument in the form of a note payable to maker's order is not a note within the meaning of this section unless and until it is indorsed by the maker.

(3.) A note is not invalid by reason only that it contains also a pledge of collateral security with authority to sell or dispose thereof.

(4) A note which is, or on the face of it purports to be, both made and payable within the British Islands is an inland note. Any other note is a foreign note.

LXXXIV. *Delivery necessary.*—A promissory note is in-

choate and incomplete until delivery thereof to the payee or bearer.

LXXXV. *Joint and several notes*.—(1.) A promissory note may be made by two or more makers, and they may be liable thereon jointly, or jointly and severally, according to its tenor.

(2.) Where a note runs, "I promise to pay," and is signed by two or more persons, it is deemed to be their joint and several note.

LXXXVI. *Note payable on demand*.—(1.) Where a note payable on demand has been indorsed, it must be presented for payment within a reasonable time of the indorsement. If it be not so presented the indorser is discharged.

(2.) In determining what is a reasonable time regard shall be had to the nature of the instrument, the usage of trade, and the facts of the particular case.

(3.) Where a note payable on demand is negotiated, it is not deemed to be overdue, for the purpose of affecting the holder with defects of title of which he had no notice, by reason that it appears that a reasonable time for presenting it for payment has elapsed since its issue.

LXXXVII. *Presentment of note for payment*.—(1.) Where a promissory note is in the body of it made payable at a particular place, it must be presented for payment at that place in order to render the maker liable. In any other case, presentment for payment is not necessary in order to render the maker liable.

(2.) Presentment for payment is necessary in order to render the indorser of a note liable.

(3.) Where a note is in the body of it made payable at a particular place, presentment at that place is necessary in order to render an indorser liable; but when a place of payment is indicated by way of memorandum only, presentment at that place is sufficient to render the indorser liable, but a presentment to the maker elsewhere, if sufficient in other respects, shall also suffice.

LXXXVIII. *Liability of maker*.—The maker of a promissory note by making it—

- (1.) Engages that he will pay it according to its tenor ;
- (2.) Is precluded from denying to a holder in due course the existence of the payee and his then capacity to indorse.

LXXXIX. *Application of Part II. to notes.*—(1.) Subject to the provisions in this part, and except as by this section provided, the provisions of this Act relating to bills of exchange apply, with the necessary modifications, to promissory notes.

(2.) In applying those provisions the maker of a note shall be deemed to correspond with the acceptor of a bill, and the first indorser of a note shall be deemed to correspond with the drawer of an accepted bill payable to drawer's order.

(3.) The following provisions as to bills do not apply to notes ; namely, provisions relating to—

(a.) Presentment for acceptance ;

(b.) Acceptance ;

(c.) Acceptance *supra* protest ;

(d.) Bills in a set.

(4.) Where a foreign note is dishonoured, protest thereof is unnecessary.

PART V

SUPPLEMENTARY

XC. *Good faith.*—A thing is deemed to be done in good faith, within the meaning of this Act, where it is in fact done honestly, whether it is done negligently or not.

XCI. *Signature.*—(1.) Where, by this Act, any instrument or writing is required to be signed by any person, it is not necessary that he should sign it with his own hand, but it is sufficient if his signature is written thereon by some other person by or under his authority.

(2.) In the case of a corporation, where, by this Act, any instrument or writing is required to be signed, it is sufficient if the instrument or writing be sealed with the corporate seal.

But nothing in this section shall be construed as requiring the bill or note of a corporation to be under seal.

XCII. *Computation of time.*—Where, by this Act, the time limited for doing any act or thing is less than three days, in reckoning time, non-business days are excluded.

“Non-business days” for the purposes of this Act mean—

(a.) Sunday, Good Friday, Christmas Day :

(b.) A bank holiday under the Bank Holidays Act, 1871, or Acts amending it :

(c.) A day appointed by Royal proclamation as a public fast or thanksgiving day.

Any other day is a business day.

XCIII. *When noting equivalent to protest.*—For the purposes of this Act, where a bill or note is required to be protested within a specified time or before some further proceeding is taken, it is sufficient that the bill has been noted for protest before the expiration of the specified time or the taking of the proceeding ; and the formal protest may be extended at any time thereafter as of the date of the noting.

XCIV. *Protest when notary not accessible.*—Where a dishonoured bill or note is authorised or required to be protested, and the services of a notary cannot be obtained at the place where the bill is dishonoured, any householder or substantial resident of the place may, in the presence of two witnesses, give a certificate, signed by them, attesting the dishonour of the bill, and the certificate shall in all respects operate as if it were a formal protest of the bill.

The form given in Schedule 1 to this Act may be used with necessary modifications, and if used shall be sufficient.

XCV. *Dividend warrants may be crossed.*—The provisions of this Act as to crossed cheques shall apply to a warrant for payment of dividend.

[Section 96 and part of section 97 repealed by Statute Law Revision Act, 1898.]

XCVII. *Savings*.—(1.) The rules in bankruptcy relating to bills of exchange, promissory notes, and cheques, shall continue to apply thereto notwithstanding anything in this Act contained.

(2.) The rules of common law including the law merchant, save in so far as they are inconsistent with the express provisions of this Act, shall continue to apply to bills of exchange, promissory notes, and cheques.

(3.) Nothing in this Act or in any repeal effected thereby shall affect—

(a.) Any law or enactment for the time being in force relating to the revenue :

(b.) The provisions of the Companies Act, 1862 [25 & 26 Vict. c. 89], or Acts amending it, or any Act relating to joint stock banks or companies :

(c.) The provisions of any Act relating to or confirming the privileges of the Bank of England or the Bank of Ireland respectively :

(d.) The validity of any usage relating to dividend warrants, or the indorsements thereof.

XCVIII. *Saving of summary diligence in Scotland*.—Nothing in this Act or in any repeal effected thereby shall extend or restrict, or in any way alter or affect the law and practice in Scotland in regard to summary diligence.

XCIX. *Construction with other Acts, &c.*—Where any Act or document refers to any enactment repealed by this Act, the Act or document shall be construed, and shall operate, as if it referred to the corresponding provisions of this Act.

C. *Parole evidence allowed in certain judicial proceedings in Scotland*.—In any judicial proceeding in Scotland, any fact relating to a bill of exchange, bank cheque, or promissory note, which is relevant to any question of liability thereon, may be proved by parole evidence: Provided that this enactment shall not in any way affect the existing law and practice whereby the party who is, according to the tenor of any bill of exchange, bank cheque, or promissory note, debtor to the holder in the amount thereof, may be required, as a condition of obtaining a sist of diligence, or

suspension of a charge, or threatened charge, to make such consignment, or to find such caution as the court or judge before whom the cause is depending may require.

This section shall not apply to any case where the bill of exchange, bank cheque, or promissory note has undergone the sexennial prescription.

SCHEDULES

FIRST SCHEDULE.—(SECTION XCIV.)

Form of Protest which may be used when the services of a Notary cannot be obtained.

Know all men that I, *A. B.*, [householder], of
in the county of _____, in the United Kingdom, at
the request of *C. D.*, there being no notary public available,
did on the _____ day of _____ 188__ at
demand payment [*or acceptance*] of the bill of exchange
hereunder written, from *E. F.*, to which demand he made
answer [state answer, if any], wherefore I now, in the
presence of *G. H.* and *J. K.*, do protest the said bill of
exchange.

(Signed) *A. B.*

G. H. } Witnesses.
J. K. }

N.B.—The bill itself should be annexed, or a copy of the bill and all that is written thereon should be underwritten.

SECOND SCHEDULE.

[*Repealed by Statute Law Revision Act, 1898.*]

BILLS OF EXCHANGE (CROSSED CHEQUES) ACT, 1906

(6 EDW. 7, C. 17)

An Act to amend section eighty-two of the Bills of Exchange Act, 1882.

[4th August 1906.]

Sec. 1. A banker receives payment of a crossed cheque for a customer within the meaning of section eighty-two of the Bills of Exchange Act, 1882, notwithstanding that he credits his customer's account with the amount of the cheque before receiving payment thereof.

Amendment of
45 & 46 Vict.
c. 61, s. 82.

Sec. 2. This Act may be cited as the Bills of Exchange (Crossed Cheques) Act, 1906, and this Act and the Bills of Exchange Act, 1882, may be cited together as the Bills of Exchange Acts, 1882 and 1906.

Short title.

BILLS OF EXCHANGE (TIME OF NOTING) ACT, 1917

(7 & 8 GEO. 5, C. 48)

An Act to amend the Bills of Exchange Act 1882, with respect to the time for noting bills.

[8th November 1917.]

Be it enacted by the King's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons in this present Parliament assembled, and by the authority of the same as follows:—

Sec. 1. In subsection (4) of section fifty-one of the Bills of Exchange Act, 1882 (which relates to the time of noting a dishonoured bill), the words "it must be

Time of Noting
45 & 46 Vict.
c. 61.

noted on the day of its dishonour" shall be repealed, and the following words shall be substituted therefor, namely, "it may be noted on the day of its dishonour and must be noted not later than the next succeeding day."

Sec. 2. This Act may be cited as the Bills of Exchange (Time of Noting) Act, 1917, and shall be construed as one with the Bills of Exchange Act, 1882, and the Bills of Exchange Acts, 1882 and 1906, and this Act may be cited together as the Bills of Exchange Acts, 1882 to 1917.

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